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CRIMINAL DIGEST

1904 to 1953

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V. V. CHITALEY, B.A., LL.B.,

Senior Advocate, Supreme Court.

AND

S. APPU RAO, B.A., B.L.,

Advocate High Court, Madras, Chief Editor,
The All India Reporter.

(Authors of the A. I. R. Manual and A. I. R. Commentaries.)

S. N. Dar
Advocate High Court
Jammu & Kashmir
Srinagar.

Volume 2

CRIMINAL P. C., S. 144 TO S. 260.

PUBLISHERS

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S. N. Dar
Advocate High Court
Jammu & Kashmir
Srinagar.

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PREFACE

(Reproduced from Volume 1)

S. N. Dar
Advocate High Court
Jammu & Kashmir
Srinagar.

It was only the other day that Mr. Justice Mack of the Madras High Court, when replying to the farewell speeches made on the occasion of his retirement from the Madras Bench, expressed his view that undue importance should not be given to case-law so as to defeat the demands of justice. He also mentioned that the saying that hard cases make bad law does not express the proper approach in the administration of justice. A law, which is not flexible enough to enable the Court to do justice in hard cases, should be regarded, according to his Lordship, as law which is not good enough for the purpose of administration of justice. Though Mr. Justice Mack pleaded guilty to the charge of being an unorthodox type of a Judge, there can be no two opinions about the desirability of mitigating the rigidity of law and ensuring its flexibility so as to enable Courts to deal out justice in all cases without feeling unduly fettered by rules and precedents.

But this conception of ideal justice is not so easy of being translated into actual practice because of the desirability of certainty as an ideal to be aimed at in any legal system. Moreover, whatever may be said about the need of freedom and elasticity, there can be no question that Judges themselves will feel highly handicapped if they are deprived of the guidance of rules and precedents. This is proved by the fact that Judges have systematically referred to and are glad to be guided by decisions which are not *binding* on them. The law reports bear full testimony to this statement and even a cursory examination of their pages will show that only a fraction of the cases that are referred to and discussed will fall under the category of *binding* precedents so far as the particular Court is concerned. This is a perfectly natural phenomenon, as it is always a difficult task to say on which side justice lies in any case and in the performance of that task one is naturally glad to take advantage of whatever light is available in precedents. So it has been rightly observed by an eminent jurist that cases provide the life blood of the law.

This shows what an indispensable role is played by law reports in the administration of justice. For it is obvious that unless judgments are published and are made available in an easily accessible form in which they can be permanently preserved for reference at any time, the mere fact that there is a judgment full of erudition on a certain question will be absolutely of no use.

But the mere publication of judgments and making them accessible for reference will by no means suffice to make the judgments really useful as sources of light and guidance for future cases unless an effective means of reference is provided. This is also an obvious proposition. But it has to be mentioned, as otherwise the humble and unpretentious labours of the digest-maker may fail to receive the notice and recognition which they deserve. The services rendered by the law-reporter and the digest-maker

are of a fundamental and indispensable nature and however unspectacular their labours may be, they have a vital function in the administration of justice.

Precedents and aids for tracing precedents are no less important on the criminal side than on the civil side. No doubt, all law is one and it is not possible to divide it into watertight compartments. Nevertheless it is customary to make a broad division of law into civil and criminal law just as we have two sets of Courts—one for civil cases and another for criminal cases. Lawyers also specialize in either branch of practice and we have in India a very large body of lawyers who devote their talents and energies wholly to practising on the criminal side.

The Criminal Law Journal has been catering to the needs of criminal Courts and criminal lawyers for more than half a century now. The Criminal Law Journal has been the first of its kind and even to-day maintains its unrivalled position in the field. It can be said without exaggeration that the pages of the Criminal Law Journal during half a century and more enshrine the bulk of Indian Criminal Case Law. So, it gives us great pleasure to launch this half a century criminal digest which covers the full period of the Criminal Law Journal till two years ago.

Although the period chosen is intended to cover the period of the Criminal Law Journal since its inception, the references are not confined to the Criminal Law Journal but also extend to the A. I. R. and other journals, as in the other digests published by the A. I. R. till now.

The system of digesting followed is the one with which the legal profession is already familiar as the A. I. R. system. It is unnecessary to elaborate on the special features of this system here. But it will not be out of place to mention that the main characteristics of this system are the adoption of a statutory basis for a heading wherever possible and secondly, the systematization of the whole matter according to a synopsis under each important section.

We are quite sure that the profession as well as the Courts will appreciate the very great convenience of having a consolidated criminal digest for a whole half century, which places at their disposal the substantial bulk of the Criminal case law of the country.

Before concluding, we wish to express our obligations to the following gentlemen for their co-operation in the preparation of the digest : Messrs. D. V. Chitaley, B. A., LL. B., Advocate, D. W. Chitaley, B. A. LL. B., M. V. Chitaley, M. W. Chitaley, V. S. Balkundi, B. A., LL. B., R. G. Dhoble, B. A., LL.B., D. H. Zadgaonkar, B. A., LL. B., K. S. Bakre, B. Sc., LL. B.; D. R. Rajandekar, B. A., LL. B., G. M. Jatar, B. A., LL. B., V. R. Buche, B. A., LL. B., M. Kuppuswami, B. A., B. L., Advocate, H. G. Pathak, B. A., LL. B. and L. S. Kale.

V. V. C.

13th May 1955.

S. A. R.

ABBREVIATIONS

REPORTS.

A. I. R. 1914 All., Bom.	...	All India Reporter 1914 Allahabad, Bombay and so on.
A. or All.	...	Indian Law Reports, Allahabad.
A. I. Cr. R.	...	All India Criminal Reports.
A. L. J.	...	Allahabad Law Journal.
All E. R.	...	All England Law Reports.
A. M. L. J.	...	Ajmer-Merwara Law Journal.
Andhra W. R.	...	Andhra Weekly Reporter.
Av. W. N.	...	Avadh Weekly Notes.
B. L. J. R.	...	Bihar Law Journal Reports.
B. or Bom.	...	Indian Law Reports, Bombay.
Bom. Cr. C.	...	Bombay Criminal Cases.
Bom. L. R.	...	Bombay Law Reporter.
B. R.	...	Bihar Reports.
Bur. L. J.	...	Burma Law Journal.
Bur. L. T.	...	Burma Law Times.
C. or Cal.	...	Indian Law Reports, Calcutta.
C. L. J.	...	Calcutta Law Journal.
Com. Cas.	...	Company Cases.
Cr. C.	...	Criminal Cases.
Cr. L. J.	...	Criminal Law Journal.
C. W. N.	...	Calcutta Weekly Notes.
C. W. N. (D. R.)	...	Calcutta Weekly Notes (Dacca Reports).
C. W. N. (F. C. R.)	...	Calcutta Weekly Notes (Federal Court Reports).
F. C. R.	...	Federal Court Reports.
F. L. J.	...	Federal Law Journal.
I. A.	...	Law Reports, Indian Appeals.
I. C.	...	Indian Cases.
I. L. R. All.	...	Indian Law Reports, Allahabad.
I. L. R. Assam	...	Indian Law Reports, Assam.
I. L. R. Bom.	...	Indian Law Reports, Bombay.
I. L. R. Cal.	...	Indian Law Reports, Calcutta.
I. L. R. Cut.	...	Indian Law Reports, Cuttack.
I. L. R. E. P.	...	Indian Law Reports, East Punjab.
I. L. R. Hyd.	...	Indian Law Reports, Hyderabad.
I. L. R. Lah.	...	Indian Law Reports, Lahore.
I. L. R. M. B.	...	Indian Law Reports, Madhya Bharat.
I. L. R. Mad.	...	Indian Law Reports, Madras.
I. L. R. Mys.	...	Indian Law Reports, Mysore.
I. L. R. Nag.	...	Indian Law Reports, Nagpur.

I. L. R. Patiala ...	... Indian Law Reports, Patiala.
I. L. R. Punj. ...	... Indian Law Reports, Punjab.
I. L. R. Raj. ...	... Indian Law Reports, Rajasthan.
I. L. R. Trav-Co.	... Indian Law Reports, Travancore-Cochin.
I. R. (1930) All. ...	... Indian Rulings (1930) Allahabad,
I. R. (1930) Bom.	... Indian Rulings (1930) Bombay.
I. R. (1930) Cal....	... Indian Rulings (1930) Calcutta.
I. R. (1930) Lah.	... Indian Rulings (1930) Lahore.
I. R. (1930) Mad.	... Indian Rulings (1930) Madras.
I. R. (1930) Nag.	... Indian Rulings (1930) Nagpur.
I. R. (1930) Oudh	... Indian Rulings (1930) Oudh.
I. R. (1930) Pat. ...	... Indian Rulings (1930) Patna.
I. R. (1930) P. C.	... Indian Rulings (1930) Privy Council.
I. R. (1930) Rang.	... Indian Rulings (1930) Rangoon.
I. R. (1930) Sind	... Indian Rulings (1930) Sind.
I. T. R. ...	... Income-tax Reports.
J. & K. L. R. ...	... Jammu & Kashmir Law Reports.
J. L. R. ...	... Jaipur Law Reports.
Kar. or I. L. R. Kar.	... Indian Law Reports, Karachi.
K. L. T. ...	... Kerala Law Times.
L. or Lah. ...	... Indian Law Reports, Lahore.
L. B. R. ...	... Lower Burma Reports.
L. L. J. or Lah. L. J.	... Lahore Law Journal.
L. R. A. ...	... The Law Reporter, Allahabad Section.
L. R. A. (Cr.) ...	... Law Reporter, Allahabad (Criminal).
L. R. (P. C.) ...	... The Law Reporter, Privy Council Section.
L. R. O. ...	... The Law Reporter, Oudh Section.
L. W. ...	... Law Weekly (Madras).
Luck. ...	... Indian Law Reports, Lucknow.
M. or Mad. ...	... Indian Law Reports, Madras.
M. L. J. ...	... Madras Law Journal.
M. L. R. ...	... Marwar Law Reports.
M. L. T. ...	... Madras Law Times.
M. L. W. ...	... Madras Law Weekly.
M. W. N. ...	... Madras Weekly Notes.
Madh. B. L. J. ...	... Madhya Bharat Law Journal.
Madh. B. L. R. ...	... Madhya Bharat Law Reporter.
Mal. L. J. ...	... Malayan Law Journal.
Mys. H. C. R. ...	... Mysore High Court Reports.
Mys. L. J. ...	... Mysore Law Journal.
N. L. J. ...	... Nagpur Law Journal.
N. L. R. ...	... Nagpur Law Reports.
O. & A. L. R. ...	... Oudh & Agra Law Reporter.
O. A. ...	... Oudh Appeals.
O. C. ...	... Oudh Cases.
O. L. J. ...	... Oudh Law Journal.
O. L. R. ...	... Oudh Law Reports.

O. W. N.	...	...	Oudh Weekly Notes.
Pak. Cas.	...	...	Pakistan Cases.
Pak. L. R. Lah.		...	Pakistan Law Reports, Lahore.
P. or Pat.	...	...	Indian Law Reports, Patna.
Pat. L. J. or P. L. J.		...	Patna Law Journal.
Pat. L. R.	...	...	Patna Law Reporter.
Pat. L T. or P. L. T.		...	Patna Law Times.
Pat. L. W. or P. L. W.		...	Patna Law Weekly.
P. H. C. C.	...	...	Patna Supplement to C. W. Notes.
Pepsu L. R.	...	...	Pepsu Law Reports.
P. L. R.	...	...	Punjab Law Reporter.
P. R.	...	...	Punjab Records.
P. W. R.	...	...	Punjab Weekly Reporter.
R. or Rang.	...	...	Indian Law Reports, Rangoon.
R. D.	...	...	Revenue Decisions.
R. L. W.	...	...	Rajasthan Law Weekly.
12 R. A.	...	...	Indian Ruling (Vol. 12), Allahabad.
12 R. B.	...	...	Indian Rulings (Vol 12), Bombay.
12 R. C.	...	...	Indian Rulings (Vol 12), Calcutta.
12 R. L.	...	...	Indian Rulings (Vol 12), Lahore.
12 R. M.	...	...	Indian Rulings (Vol 12), Madras.
12 R. N.	...	...	Indian Rulings (Vol 12), Nagpur.
12 R. O.	...	...	Indian Rulings (Vol 12), Oudh.
12 R. P.	...	...	Indian Rulings (Vol 12), Patna.
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12 R. S.	...	...	Indian Rulings (Vol 12), Sind.
S. C. A.	...	...	Supreme Court Appeals.
S. C. J.	...	...	Supreme Court Journal.
S. C. R.	...	...	Supreme Court Reports.
S. L. R.	...	...	Sind Law Reporter.
Sau. L. R.	...	...	Saurashtra Law Reporter.
T. C. L. R.	...	...	Travancore Cochin Law Reports.
T. L. J.	...	...	Travancore Law Journal.
U. B. R.	...	...	Upper Burma Rulings.
U. P. L. R.	...	...	United Provinces Law Reporter.

OTHER ABBREVIATIONS.

Appl.	...	...	Applied.
Appr.	...	...	Approved.
Art.	...	...	Article.
Ch.	...	...	Chapter.
Cl.	...	...	Clause.
Comm.	...	...	Commented.
Cons.	...	...	Considered.
Cr.	...	...	Criminal.
Disc.	...	...	Discussed.

Other Abbreviations

Diss.	...	... Dissented from.
Dist.	...	... Distinguished.
Doubt.	...	... Doubted.
Expl.	...	... Explained.
Foll.	...	... Followed.
F. B.	...	... Full Bench.
F. C.	...	... Federal Court.
O.	...	... Order.
P. C.	...	... Privy Council.
R.	...	... Rule.
Ref.	...	... Referred to.
Rel. on.	...	... Relied on.
S.	...	... Section.
S. B.	...	... Special Bench.
S. C.	...	... Supreme Court.
Sch.	...	... Schedule.

CONTENTS

Criminal Procedure Code (V of 1898) S. 144 to S. 260 937

THE
50 YEARS'
CRIMINAL DIGEST
1904 to 1953

VOLUME II

CRIMINAL P. C. (V of 1898) :

——S. 144.

SYNOPSIS.

1. 'Annoyance', meaning of.
2. Applicability, scope and object.
3. Civil dispute.
4. Civil suit.
5. Contents of order.
6. Direction to take certain order.
7. Disobedience of order.
8. Dispute about land and water. See also Note 22.—Ss. 144, 145 and 107.
9. Duties and powers of court.
10. Duration of order.
11. Effect of order.
12. Evidence.
13. Ex parte order—Sub-s. (2).
14. Nature of orders which can be passed.
15. Nature of proceedings.
16. Order against general public—Sub-s. (3).
17. Order to abstain.
18. Power to override private rights.
    (a) Processions, see also, Highway.
    (b) Rival hats.
    (c) Public meetings.
19. Rescission or alteration of order—Sub-ss. (4) and (5).
20. Revision.
    (a) Jurisdiction of High Court.
    (b) Grounds of interference.
    (c) Powers of High Court.
    (d) Time spent order—Interference.
21. Service of order.
22. Ss. 144, 145 and 107.
23. Successive orders.
24. Validity of order.
25. Who can pass order.

CRIMINAL P. C. (V of 1898), S. 144

1. 'Annoyance', meaning of.

——The word "annoyance" in S. 144 need not necessarily mean physical annoyance and may include mental annoyance also. (Panchapakesa Ayyar, J.) Bandi Butchaiah. In re.

AIR 1952 Mad 61 : 1951-2 MLJ 374 : 64 Mad LW 874 : 1951 Mad WN 749 : 1951 Mad WN (Cr) 217 : 1951 All WR (Sup) 108 : 1952 Cr LJ 161.

——The word 'annoyance' in S. 144, Criminal P. C., is not confined to physical annoyance. It may either be physical or mental. (Beaumont, C. J. and Barlee, J.) Emperor v. Ganesh Vasudeo.

AIR 1931 Bom 135 : 33 Bom LR 59 : Ind Rul (1931) Bom 252 : 55 Bom 322 : 130 IC 396 : 32 Cr LJ 507.

2. Applicability, scope and object.

——Powers under— Power to decide question of possession and title— Authority to take property from 'A' and make it over to 'B'.

Under Section 144, a merely summary power is given to prevent breach of the peace and it is never meant to give jurisdiction to a criminal Court to decide finally even the question of possession and much less to decide questions of title and ownership of a property. The provisions of the section do not entitle the Court to take a particular piece of property from the custody of 'A' and make it over to 'B'. (Das and Sinha, JJ.) Indrasan Rai v. Enayat Khan.

AIR 1952 Pat 316 : 1952 Cr LJ 1124.

——Defamatory attacks on Government officials in newspaper— No likelihood of breach of peace etc.—Order under S. 144, not proper—Defamation.

Orders under S. 144 are passed only in the ge-

CRIMINAL P. C. (V of 1898), S. 144—2. Applicability, scope and object

neral interests of society and not in the interests of particular officers etc. Section 144 can be used even against newspapers in proper cases of incitements to breaches of the peace or to commit nuisances, dangerous to life or health or to annoy officers lawfully employed. But mere "annoyance" caused to Government officials, when not actually employed in their task, by reckless or defamatory attacks on them not involving a breach of the peace or danger to life or health will not do for invoking the powers under S. 144. Where in an attempt to curb unjust attacks on officers, all attacks on officers and even comments on the public acts of all officers of all departments were prohibited in the order under S. 144 while pretending to leave the privileges of the newspaper editor and his newspaper intact. That is a clear abuse of the powers given under S. 144. Section 144 has the vital phrase "to abstain from a certain act", and if the order directed the editor to abstain from an untold number of acts of a very vague and uncertain nature, called "excessive publication" this vital clause is violated. (Panchapakesa Ayyar, J.) Bandi Butchaiah, In re.

AIR 1952 Mad 61 : 1951-2 MLJ 374 : 64 MLW 874 : 1951 MWN 749 : 1951 MWN (Cr) 217 : 1951 AWR (Sup) 103 : 1952 Cr LJ 161.

——Scope—Section not meant for evicting person in possession and placing usurper in possession by means of injunction— Order not to be made without investigation as to true facts.

Section 144 was never intended for evicting the person in possession and placing the usurper in possession by means of an injunction under the section. The section is intended to give Magistrates powers to take immediate action to prevent breaches of the peace and such like; but even so Magistrates should be careful to ascertain who is in possession and who is the disturber of that possession. Issue of an injunction of this sort, though the order is only effective for a comparatively short space of time is a serious matter and the order should not be made without an investigation as to the true facts of the case. (Harries, C. J. and Das Gupta, J.) Sk. Hafizul v. Gopal Sardar.

AIR 1951 Cal 472 : 53 CWN 487 : 52 Cr LJ 856.

——Scope— Local inspection in proceedings under S. 144—Decision if can be based merely on local inspection.

See, also ibid, S. 539 B.

AIR 1951 Pat 285 : 52 Cr LJ 10.

——Right to receive light across another's land —Right not acquired as easement —Obstruction of, if actionable— Action, if can be taken under S. 144.

It cannot be said that S. 144, Criminal P. C., contemplates only acts which, when allowed to be completed, will constitute an offence. In view of the definition of "injury" in S. 44 and of the

CRIMINAL P. C. (V of 1898), S. 144—2. Applicability, scope and object

definition of "illegal" in S. 43 of the I.P.C., which are adopted by the Criminal P. C., by its S. 4 (2) for its own purposes, whenever "a certain act" or certain measure "taken with certain property in possession" of the offender is such as may amount to 'injury or risk of injury' to any person, such person is entitled to have the protection of S. 144. So even if the act or the measure complained of be not such as would amount to an offence when allowed to be completed, if these are only such as, when completed, would furnish grounds for a civil action only, the protection of the section will extend to the person. Where the act complained of is one of obstruction of ancient light and air by raising a structure, the act is not "obstruction to any person" within the meaning of S. 144. Such obstruction, if allowed, may amount to "an injury to the person" within the meaning of the section, if it infringes any right of easement or any natural incident of property right apart from any acquired easement. The right to receive light across another's land is not a natural incident of property but can only be acquired as an easement either by grant or prescription. Unless and until such a right has been acquired in the manner of other easements, no amount or mode of obstruction is actionable. Hence the obstruction of such right cannot furnish ground for action under S. 144. (Mohammad Akram and Pal, JJ.) Rashid Allidina v. Jiwandas Khemji.

AIR 1943 Cal 35 : ILR (1942) 1 Cal 488 : 46 CWN 136 : 15 RC 538 : 204 IC 370 : 44 Cr LJ 288.

——Circumstances justifying order.

To justify an order under S. 144, there must be a casual connection between the act prohibited and the danger apprehended to prevent which the order is passed. (Young, C. J., Bhide and Muhammad Munir, JJ.) Editor, Tribune v. Emperor.

AIR 1942 Lah 171 : 44 PLR 297 : ILR (1942) Lah 510 : 15 RL 65 : 201 IC 572 : 43 Cr LJ 747 (F B).

——Essentials of proceedings under S. 144—Order in cases of urgency—Nature of—Jurisdiction.

The urgency of a case of nuisance or apprehended danger is essential to its treatment under S. 144, and the orders to be passed under the section must be of a temporary nature, as is shown clearly by Sub-S. (6) of the section unless, in cases of danger to human life, health or safety, or a likelihood of a riot or an affray, the Provincial Govt., by notification in the Official Gazette otherwise directs. Such orders are passed in the general interests of society and may validly interfere within the limitations laid down with private rights of enjoyment of property. There is, therefore, all the more reason why the jurisdiction under S. 144 ought to be exercised carefully and interference with private rights

CRIMINAL P. C. (V of 1898), S. 144—2. Applicability, scope and object

reduced to a minimum and regulated by a full observance of the limitation imposed by the section itself.

The Magistrate is authorised by S. 144, in proper cases to "direct any person to abstain from a certain act or to take certain order with certain property in his possession or under his management". The abstention from certain acts must obviously not be carried too far. (Dhavle, J.) Ram Narain v. Parmeshwar Prasad.

AIR 1942 Pat 414 : 8 BR 722 : 23 PLT 644 : 15 RP 28 : 200 IC 776 : 43 Cr LJ 722.

——Ss. 144, 439— S. 144, if requires Magistrate to uphold rights, whether constitutional or otherwise— Judicial inquiry into rights of parties — Intention of section.

There is nothing in S. 144, Criminal P. C., requiring the Magistrate to uphold rights, whether constitutional or otherwise; there is nothing in the section requiring the Magistrate to hold a judicial inquiry into the rights of the parties involved. Once a Magistrate is of opinion that there is sufficient ground for proceeding under S. 144, Criminal P. C., once a Magistrate considers that there is 'apprehended danger' which can only be averted by directing a person or persons to abstain from a certain act which may result in danger to human life or a disturbance of the public tranquillity or a riot or an affray, he is entitled to make an order directing that person or those persons to abstain from such act even though such act is otherwise lawful, even though such person or persons may be acting lawfully in the exercise of the right. This section is intended to provide for an emergency, and it is idle to contend that in an emergency when a riot is apprehended and when there is apprehension of a serious disturbance of the public tranquillity, the Magistrate is required to deliberate upon and decide the rights of the parties before acting. (Lobo and Tyabji, JJ.) Gul Hassan v. Emperor.

AIR 1939 Sind 230 : 12 RS 67 : ILR (1939) Kar 751 : 183 IC 641 : 40 Cr LJ 823.

——Ss. 144, 147, 203— Complaint dismissed—Preventive action not taken—Further report by Police for preventive action —Petitioner not in possession within three months— Preventive action, if can be taken.

Where the Magistrate, on a complaint, does not take action under any of the preventive sections of the Criminal P. C., on the ground that it has not been substantiated and consequently dismisses the complaint under S. 203, it is not open to him on a further report by the Police to take preventive action under S. 147, when the petitioner is not in possession within three months from the institution of the inquiry. (James and Saunders, JJ.) Kinei Majhi v. Govind Prasad Singh.

AIR 1936 Pat 44 : 17 PLT 37 : 2 BR 240 : 8 RP 382 : 160 IC 795 : 37 Cr LJ 327.

CRIMINAL P. C. (V of 1898), S. 144—2. Applicability, scope and object

——S. 144 (1)—Injury to property as distinguished from danger to human life occupying property—Relevancy of order under S. 144 (1)— Court's power under exceptional circumstances.

The first thing which the Magistrate has got to be satisfied about is that there is sufficient ground for proceeding under S. 144, and an immediate prevention or speedy remedy is desirable and the second element which has got to be established is that the Magistrate should consider that the direction which he is about to give is one which is likely to prevent or tends to prevent, obstruction, annoyance or injury to any person lawfully employed or danger to human life, health or safety or a disturbance of the public tranquillity or a riot or an affray.

On the allegation that his house has cracked due to the fact that at a distance of 20 feet from his house B, his neighbour, had started to drive piles into the soil for strengthening a foundation of a new building, A applied for an order under S. 144:

Held, that what the Magistrate had got to be satisfied about, in making an order under S. 145 of the Code, in so far as the second of the aforesaid elements is concerned, was that the director was likely to prevent injury or risk of injury to human life or safety. The question of injury to property as distinguished from danger to or safety of human life occupying the property has got very little relevancy.

Under exceptional circumstances, the Criminal Court would be justified in cases of emergency on being satisfied as to the urgency of the situation to make an order under S. 144 of the Code, which may have the effect of interfering with the private rights of individuals, even though such rights are being lawfully exercised. (Mukherjee and Bartley, JJ.) Ganesh Chandra v. Lalit Mohan.

AIR 1934 Cal 513 : 38 CWN 388 : 7 RC 83 : 151 IC 183 : 35 Cr LJ 1252.

——Exercise of powers under S. 144—Guiding principle—Powers of Magistrate to delegate.

The Legislature, by S. 144 of the Cr. P. C., has conferred very large powers upon Magistrates who have to deal with urgent cases of nuisance or apprehended danger. That section enables a Magistrate to make temporary orders, irrespective of the rights of the parties concerned. But as the power is wide, there is great necessity to be cautious about its exercise.

Courts, civil as well as criminal, exist for the protection of rights, and, therefore, the authority of a Magistrate should ordinarily be exercised in defence of rights rather than in their suppression; when an order in suppression of lawful rights has to be made, it ought not to be made unless the Magistrate considers that other action that he is competent to take is not likely to be effective, and the order if made, should never be dispropor-

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tionate to, but should always be, as far as possible, commensurate with exigencies of any particular situation.

The amendment introduced by the Act of 1932 by deleting Sub-S. (3) from S. 435 which till then existed has made the order of the Magistrate open to revision, and as a Court of Revision the High Court has to consider not merely the legality of such orders but their propriety as well.

It is competent for a Magistrate, who has to make an oder under S. 144 of the Code to depute another Magistrate to make an enquiry and submit a report and then to act on the report so submitted though he cannot delegate his magisterial function to another.

On the evidence, their Lordships held that the materials on the record were not sufficient to justify the orders complained of and the orders were set aside. (Mukerji and Patterson, JJ.) Francis Duke Cobridge Sumner v. Jogendra Kumar.

AIR 1933 Cal 348 : Ind Rul (1933) Cal 262 : 142 IC 319 : 34 Cr LJ 334

——Necessary to pass order—Apprehended breach of public peace — Order prohibiting wearing of Gandhi caps—Legality.

The test to see whether the order under S. 144 was justified or not is to find out whether the act, be it lawful or unlawful, was likely to lead to a breach of public tranquillity. The likelihood or tendency must be a reasonable or prominent one.

Held, that the prohibition of the use of Gandhi caps in a particular locality was not, on the facts disclosed, necessary in the interests of peace and that the order under S. 144 should consequently be quashed. (Pandalai, J.) Satyanarayana Choudhari v. Emperor.

AIR 1931 Mad 236 : 1930 MWN 841 : 131 IC 449 : 1931 Cr C 332 : 33 MLW 632 : 60 MLJ 378 : 32 Cr LJ 744.

——Section 144 makes provision for a contingency that local and temporary orders may, at times, be made without there being a real danger of breach of the peace or other reason justifying it. Accordingly under that section it has to be proved that the accused not merely disobeyed the lawful order but that the act of disobedience was such as caused or involved the risk of a breach of the peace or other danger or trouble. (Rankin, C. J. and Patterson, J.) Dabruddin Mohammad v. Emperor.

AIR 1930 Cal 131 : IR 1930 Cal 497 : 125 IC 273 : 1930 Cr C 131 : 31 Cr LJ 804.

——Procedure under S. 144 warrants sufficient ground.

To give the Magistrate jurisdiction under S. 144, all that is required is that there is sufficient ground to proceed under S. 144 and immediate prevention or speedy remedy is desirable. In such circumstances private rights must give way whatever be the subject-matter of dispute; in particular it is immaterial that the dispute relates to land. Given the necessary conditions an order cannot be impugned as without jurisdiction merely because it was arbitrary. (Macpherson, J.) Radhe Das v. Jairam Mahto.

AIR 1929 Pat 714 : 123 IC 73 : 1929 Cr C 586 : 31 Cr LJ 466.

——When a breach of the peace is anticipated, action is to be taken against the potential law breakers and not against the peaceful citizens whom, it is expected, that the law-breakers will molest. AIR 1922 Cal. 483 and AIR 1924 Pat. 767, Foll. (Harrison, J.) Kazan Chand v. The Crown.

AIR 1927 Lah 430 : 100 IC 825 : 28 Cr LJ 345.

——Sec. 144 provides speedy remedy in cases of emergency and under Sub-S. 2, a Magistrate can pass an ex parte order immediately on receiving a police report that he is satisfied that immediate action is necessary. Rescission or alteration of the said order can be sought by the aggrieved party under Sub-S. 4. (Wazir Hasan, A. J. C.) Jang Bahadur v. Emperor.

AIR 1924 Oudh 338 : 77 IC 721 : 11 OLJ 54 : 25 Cr LJ 432.

——Scope of—Jurisdiction.

Under S. 144, Cr. P. C., a magistrate has no jurisdiction to make any order unless he is satisfied that there is an apprehension of a breach of the peace and that immediate prevention of speedy remedy is desirable. If he had made up his mind to that effect he must state the material facts in the order. The section should be applied only to temporary orders in urgent cases of nuisance or apprehended danger and not to cases where there is a dispute as to land for the settlement of which S. 145 provides the proper remedy. (Kulwant Sahay, J.) Akal Mahton v. Mahabir Mahton.

AIR 1924 P 145 : 1 Pat LR 223 (Cr) : 5 PLT 90 : 75 IC 531 : 24 Cr LJ 947.

——Scope of—Nuisance—Temporary emergency — Orders under section.

The opponent applied to the Chief Presidency Magistrate to have the noises from an adjoining house stopped under the provisions of S. 144. Held, Per Shah, J. that though the order was in form within S. 144, Cr. P. C., yet it was in substance outside it inasmuch as the opponent's application to the Magistrate was for the prevention of nuisance not temporarily but permanently. Per Hayward, J. It was difficult to say that the order was not within S. 144 ; nor was it possible to hold that a temporary injunction should not be passed merely because the dispute demanded a permanent injunction for final settlement. (Shah and Hayward, JJ.) In re Cawasjee Jehangiri Readymoney.

AIR 1920 Bom 367 : 22 Bom LR 157 : 62 IC 409 : 22 Cr LJ 521.

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——Ss. 144 and 439—Scope of—Imminent danger—Time-expired order—Revision.

The jurisdiction of a Magistrate to pass an order under S. 144 depends on the urgency of the case. A mere statement by the Magistrate that he considers the case to be urgent is not sufficient to give him jurisdiction, if the facts show that in reality there is no urgent necessity for action. In a proceeding to set aside an order of a Magistrate under S. 144 the High Court would not consider whether the opinion expressed by the Magistrate on the civil rights of the parties is right or wrong : What it has to consider is, whether the Magistrate's order was made with jurisdiction or not. A Magistrate cannot, by an order under S. 144, direct a person to remove an obstruction to a culvert through which the drainage of certain Railway quarters flows into a tank on the ground that a rainfall in an hour would flood the quarters and compel evacuation. It was a danger to the inhabitants of a particular quarter who might be inconvenienced but was not a source of danger to public health. The order under S. 144 should be set aside even though more than two months had expired since its passing inasmuch as a prosecution of the petitioner under S. 188 of the Penal Code for disobedience to the order had been instituted. (Newbould and Huda, JJ.) Chandra Nath Mukherji v. East Indian Railway Co.

AIR 1919 Cal 584 : 23 CWN 145 : 28 CLJ 483 : 47 IC 803 : 19 Cr LJ 951.

——Scope of—Order when not to be made.

An order under S. 144 can be made only in cases of urgency and when no other provision of law can be applied and not merely where the Magistrate apprehends breach of peace himself without any report from the police of the likelihood of a breach of peace. (Casperz and Sharfuddin, JJ.) Kamini Mohan Das v. Harendrakumar Sarkar.

38 Cal 876 : 13 IC 782 : 13 Cr LJ 126.

3. Civil dispute.

——S. 144 (1)— Magistrate cannot adjudicate a question of possession or title. (Wanchoo, C. J. and Dave, J.) Bhanwar Singh v. S. D. M. Khetri.

AIR 1953 Raj 202 : ILR (1953) 3 Raj 189 : 1953 Cr LJ 1843.

——Scope—Eviction of tenant.

Section 144 does not entitle a landlord to secure the eviction of a tenant through the intervention of criminal Court and it is an abuse of the process of the Court to invoke the help of that section for the remedy of a civil wrong: AIR 1928 All 14 and AIR 1948 Cal 192, Rel. on. (Bhandari, J.) Radha Kishen v. Indar Parkash.

AIR 1951 Punj 109 : 52 Cr LJ 1304.

——Difficult question of ownership.

Nice questions as to the ownership of chars in a river which frequently changes its position, involving extremely difficult questions can only be decided satisfactorily in a civil Court and should not form the subject-matter of a proceeding under S. 144. (Harries C. J. and Bose, J.) Kalipada Das v. The State.

AIR 1951 Cal 207 : 51 Cr LJ 1575.

——The section does not apply to disputes of a civil nature of private individuals.

The applicant was for some time an agent of the Asiatic Petroleum Co., but his agency was terminated. Notwithstanding the termination of his agency, he refused to deliver back the register and goods of the company. The opposite party then filed an application under S. 144 praying that the applicant be directed to deliver to the opposite party the register and goods in his possession. The Magistrate, after following the necessary procedure, ordered the applicant to deliver all things belonging to the company to it. The applicant challenged the decision.

Held, that the Magistrate's order was illegal as proceedings under the section may be taken only in urgent cases of nuisance or apprehended danger, and the existence of these circumstances of a condition precedent to an action under the section. The section is not intended to vest a Magistrate to decide disputes of a civil nature between private individuals and to usurp the functions of a civil Court. (Iqbal Ahmad, J.) Hafizuddin v. C. Laborde.

AIR 1928 All 14 : 105 IC 815 : 50 All 414 : 26 ALJ 83 : 8 LRA Cr 149 : 8 AI Cr R 362 : 28 Cr LJ 991.

——Other means to avert danger being available. proceedings should not be taken under S. 144.

An action should be taken under S. 144 only in urgent cases of nuisance or apprehended danger. It is not proper that Criminal Courts should take upon themselves a jurisdiction to decide what are really civil disputes.

Where the complaint was that a person by closing a drain and obstructing the flow of the rain water of another house endangered the safety of the house but where its owner could drain off the water in some other way.

Held, that the proper remedy was in the Civil Court. (Mukerji, J.) Haji Ali v. Emperor.

AIR 1925 All 678 : 85 IC 656 : 26 Cr LJ 560.

——Questions of title, fraud, etc., cannot be tried in proceedings under S. 145 or 144. (Adami and Bucknill, JJ.) H. V. Low and Co., Ltd. v. Maharaja Sir Mahendra Chandra Nandy.

AIR 1925 Pat 33 : 84 IC 332 : 3 Pat 809 : 26 Cr LJ 268.

4. Civil suit.

——Scope—Order under— Civil rights— Public right—Special damage.

An order under S. 144 does not affect the civil rights of the parties and does not by itself give a right of suit. If the right sought to be estab-

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lished is a public right, special damage must be found. 32 M. 527 : 29 MLJ 91, F., 32 M. 478; 2 M. 140; 18 B. 693, Dist. (Seshagiri Aiyar and Bakewell, JJ.) Kalmatappa v. Joshi Narayana Bhat.

AIR 1918 Mad 448 : 42 IC 337.

——Order prohibiting procession—Cause of action.

An order of Magistrate prohibiting procession on a public street furnishes a good cause of action for a suit for a declaration and injunction regarding right to go in procession. (Benson, O. C. J. and Miller, J.) Mutheyya Reddi v. Sudalaimuthu Nadar.

20 MLJ 119 : 8 MLT 114 : 5 Ind Cas 902.

——Religious processions.

The right to go in procession through streets attended with music, &c., is a natural right inherent in every subject of the state, and no user is necessary to the creation of such right. (6 Mad 203 Foll.) The adherents of any particular religious sect cannot prevent the adherents of another religious sect from carrying on a religious procession, or from assembling for public worship in public streets, on the ground that such worship had not hitherto been carried on, or that it was opposed to religious feelings. It would be unreasonable to allow one sect or class to exclude another on the ground that by the performance of religious rites they have appropriated a public street or any portion thereof for their religious processions or worship. It is true that no action lies for the obstruction of a religious procession along a highway in the absence of special damage, but where an order has been passed by a Magistrate, restraining such procession from passing through a public street, at the instance of one party, the other party is entitled to bring a suit for declaration of their rights. (Ralph Benson, J. and Sankaran Nair, J.) Kandaswamy Mudali v. Subraya Mudali.

1 Ind Cas 716 : 19 MLJ 617 : 32 Mad 478.

5. Contents of order.

——Order must state material facts of case, on which order is based— Mere fact that order is drawn up in form provided in schedule to Code, is not sufficient excuse for not mentioning facts—Defect is fatal. (U Aung Tha Gyaw, J.) Directors of the Sooratee Bara Bazar Co., Ltd. v. The Union of Burma.

1948 Bur LR 365.

——Order under S. 144, interfering with liberty of press, when should be passed.

The right of the public to have news published is common to all countries where there is liberty of the press and it is the right of all newspapers equally to publish news provided it does not offend against any existing law. It is obvious, therefore, that the powers given to a Magistrate under S. 144, Criminal P. C., to interfere with the

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liberty of the press should be used very sparingly and only for good cause shown. It is for this reason that S. 144 itself makes it obligatory for the Magistrate in any such order to indicate the material facts which justify such an order. Not only is it necessary to state the material facts but that there must be urgency in the matter. (Young C. J., Bhide and Muhammad Munir, JJ.) P. T. Chandra, Editor, Tribune v. Emperor.

AIR 1942 Lah 171 : 44 PLR 297 : 15 RL 65 : ILR (1942) Lah 510 : 201 IC 572 : 43 Cr LJ 747 (F B)

——Magistrate should have regard to exact statutory provisions.

It would be well if in issuing orders under S. 144, District Officers have regard to the exact terms of the statutory provisions under which they purport to act. (Thom, C. J., Ganganath and Braund JJ.) Emperor v. Afaq Hussain Jauhar.

AIR 1941 All 70 : (1940) ALJ 885 : 13 RA 337 : 1940 AWR (HC) 642 : ILR (1941) All 186 : 192 IC 466 : 42 CrLJ 298 (FB).

——Order under S. 144 — Requisites of — Order should state in clear and precise form what the public are prohibited from doing.

The Magistrate must satisfy himself that there is sufficient ground for proceeding under S. 144, and when he is so satisfied, he must set out the material facts of the case in his order. The reason for this is that the public should know why it is necessary that their lawful rights should be suspended. The failure to set out the material facts of the case in the order is fatal to its validity. Merely because the order has been drawn up on the lines of Form No. 21 of Sch. V, Criminal P. C., it cannot be said to be a good and valid one. The order should not be vague and indefinite but must state in clear and precise terms what it is which the public are prohibited from doing. It should not be vague and indefinite: (Ba U. J.) Thakin Aung Bala v. District Magistrate Rangoon.

AIR 1939 Rang 181 : 11 R Rang 516 : 1939 Rang LR 294 : 182 IC 23 : 40 Cr LJ 645.

——Order under S. 144 should be in clear terms.

As S. 144 Cr. P. C., empowers a Magistrate to interfere materially with the liberty of the subject, it is necessary that he should promulgate, his order in terms sufficiently clear to enable the public, or persons affected by it to know exactly what it is which they are prohibited from doing. (Beaumont, C. J. and Sen, J.) Sorab Shavaksha v. Emperor.

AIR 1935 Bom 33 : 7 RB 359 : 36 BomLR 1129 : 154 IC 637 : 36 CrLJ 547.

——Order containing reference to customary rules and timings—Order, if indefinite and not clear.

The fact that an order under S. 144, Cr. P. C., contains reference to customary rules and to customary timings in the matter of taking out pro-

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cessions, does not mean that the order is not clear and definite. It is for the persons who wish to take out the proceedings to find out what the customary rules and timings are. (Nanavutty, J.) Emperor v. Niazu Khan.

AIR 1934 Oudh 162 : 11 OWN 384 : 6 RO 412 : 9 Luck 543 : 148 IC 518 : 35 CrLJ 699.

——Material facts must be stated — Order to public generally, legality of.

Before a Magistrate can take action under S. 144, Criminal P. C., he must be of the opinion that immediate prevention or speedy remedy is necessary, and when he has made up his mind that it is so, he must state the material facts in the order.

An order under S. 144, Criminal P. C., can be directed to the public generally only "when frequenting or visiting a particular place", such, for instance, as a market or a park or other place within a specified boundary. There is no power to direct the public generally simpliciter.

An order prohibiting the public generally from taking part in processions within the whole of the Municipal limits and all public places within such limits is illegal. (Murphy and Rangnekar, JJ.) Motilal Gangadhar v. Emperor.

AIR 1931 Bom 513 : 33 Bom LR 1178 : Ind Rul (1932) Bom 21 : 134 IC 1237 : 33 Cr LJ 75.

Where a District Magistrate is formulating an order under S. 144, it is incumbent upon him to show two things quite plainly. The first of all, the thing which is prohibited, and secondly, the persons who are prohibited. It is not fair to leave people in doubt as to whether they are prohibited from doing a thing or not. To include among the class of persons prohibited "any other persons who are or may be concerned in the project" is too vague. (Beaumont C. J. and Barlee, J.) Emperor v. Ganesh Vasudeo.

AIR 1931 Bom 135 : 33 Bom LR 59 : 55 Bom 322 : Ind Rul (1931) Bom 252 : 130 IC 396 : 32 Cr LJ 507.

Under S. 144 something more is necessary to be done than a mere recital of the fact that in the opinion of the District Magistrate there was sufficient ground for proceeding under S. 144. An order issued under the section must state the material facts of the case justifying the issue of the order. (Kulwant Sahay, J.) R. E. Blong v. King-Emperor.

AIR 1924 Pat 767 : 82 IC 42 : 1924 PHCC 262 : 6 PLT 130 : 3 Pat LR Cr 41 : 25 Cr LJ 1178.

——Magistrate's authority to act under S. 144—Record should show.

It is desirable that the record should show, in clear and unmistakable terms, the authority under which a Magistrate, taking action under S. 144, Cr. P. C. professes to act. (May Oung, J.) U Thudama Wara v. King-Emperor.

AIR 1923 Rang 146 : 74 IC 65 : 2 Bur LJ 22 : 1 Rang 49 : 24 CrLJ 737.

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——Grounds for order whether to be stated.

A Magistrate is fully justified in passing an emergent order under the section without setting out in the order the grounds for his action. 13 CWN 188, Expl. (Newbould and Huda, JJ.) Bhupendra Mohan Pal Chaudhuri v. Chairman of Madaripur Municipality.

AIR 1917 Cal 6 : 41 IC 1004 : 18 Cr LJ 892.

——Ss. 144 and 145 — Procedure.

An order under Chapter XII should specify the section under which it is passed and the Court of appeal or revision should not be put to the difficulty of finding, whether it was under S. 144 or S. 145. (Sadasiva Aiyar J.) Sreenivasa Ayyangar v. Ranganatham Chettiar.

AIR 1918 Mad 503 : 38 IC 327 : 18 Cr LJ 295.

——Order under, when can be made.

Before a Magistrate can take action under S. 144, he must be of opinion that immediate prevention or speedy remedy of apprehended danger or of a nuisance is necessary. When he has made up his mind that it is so he must state the material facts in his order. (Henderson and Geidt, JJ.) Karoolal Sajawal v. Shyam Lal.

32 C 935 : 9 CWN 864 : 1 CLJ 216 : 2 Cr LJ 215

6. Direction to take certain order.

——Direction to take certain order with property.

A Magistrate has jurisdiction to pass an order directing a person in possession to remove a wall erected by him in contravention of an agreement with opposite party. (Lakshmi Narain J. C.) Jagat Ch. Paul v. Dhirendra Chandra Paul.

AIR 1953 Tripura 6 (2) : 1953 Cr LJ 1469.

A Magistrate passed an order under S. 144, Criminal P. C., directing the petitioner to cut a bundh or to show cause against the order. The petitioner appeared and showed cause. The Magistrate was not satisfied with the explanation and declined to cancel the order. The petitioner failed to comply with it, and was prosecuted under S. 188, I. P. C.:

Held, that though such an order must to some extent, be infructuous, inasmuch as a failure to comply with it before the time for showing cause had elapsed would not be punishable, it could not be said that the order was made without jurisdiction. By its very terms, S. 144 empowers the Magistrate to direct a person to take certain order with certain property in his possession. In the present case, the Magistrate had jurisdiction to direct the petitioner to cut the bundh. (Henderson and Biswas, JJ.) Bala Ram Dey v. Prem Ram.

AIR 1937 Cal 406 : 41 CWN 897 : 10 RC 150 : 170 IC 499 : 65 CLJ 450 : ILR (1937) 2 Cal 475 : 38 Cr LJ 915.

7. Disobedience of order.

——Ss. 144, 195, 10, 17, 528 and 476 — Withdrawal of complaint for disobedience of order under S. 144

CRIMINAL P. C. (V of 1898), S. 144—7. Disobedience of order — Competency of Additional District Magistrate. 52 Cri. L. J. 1508, Dissent.

A First Class Magistrate is subordinate to the District Magistrate and not to the Additional District Magistrate.

Where a First Class Magistrate has filed a complaint under S. 188, Penal Code for the disobedience of his order under S. 144, Criminal P. C., the Additional District Magistrate has no jurisdiction to withdraw it whether the First Class Magistrate is considered to have filed the complaint as a Court or purely as a public servant. On the former view it is the Sessions Court and on the latter view it is the District Magistrate that has power to withdraw the complaint.

In this view of the matter the effect of S. 476 of the Code on the question whether the First Class Magistrate acted as a Court or as purely a public servant when filing the complaint under S. 188, Penal Code does not arise as that consideration can arise only when the Court is called upon to decide which of the clauses of S. 195 of this Code applies for the withdrawal of that complaint. (Somasundaram J.) Bondalapati Thatayya v. Gollapudi Basavayya.

AIR 1953 Mad 956 : 1953 Mad WN 485 : 1953 Cr LJ 1789.

Proceeding under — Attachment cannot be ordered — Disobedience of order under S. 188 and not S. 253 or S. 379, I. P. C. (Krishnan J. C.) State of Vindhya Pradesh v. Ram Lakhan.

AIR 1953 Vind-Pra 25 : 1953 Cr LJ 1198.

Disobedience of order under section — Absence of evidence of service on person or adult male member of his family — Proceedings for breach of order under S. 188, Penal Code, if maintainable. See ibid, S. 124.

AIR 1951 Cal 207 : 51 Cr LJ 1575.

Order under S. 144, Cr. P. C. — Mere disobedience of it is not punishable. See Penal Code (45 of 1860), S. 188.

AIR 1949 Cal 677 : 51 Cr LJ 59.

——Order under — Disobedience of — Court trying accused for disobedience cannot superimpose his view on propriety of order.

It is not open to the Court trying an accused person for disobedience of an order, under S. 144 to decide whether he would have passed such an order in the circumstances of the case. He has to take the order as a good and valid order unless it is shown that the order was a nullity. He is not to superimpose his view on the propriety of the order. (Sen J.) The King v. Darbarilal Shaw.

AIR 1949 Cal 677 : 54 Cal WN 256 : 51 Cr LJ 59.

Mere disobedience of order under S. 144, Cr. P. C., does not amount to an offence under S. 188, Penal Code. See Penal Code (45 of 1860), S. 188. **48 Cr LJ 747.**

CRIMINAL P. C. (V of 1898), S. 144—7. Disobedience of order ——Accused violating order under S. 144, denying knowledge of order — Duty of prosecution — Onus, shifting of.

Where the accused who is prosecuted for violating an order under S. 144, denies knowledge of the order, all that can reasonably be demanded of the prosecution is proof of circumstances from which it may be inferred that the accused had knowledge of the order. If such proof is forthcoming, the onus is on the accused to prove ignorance of the order despite publication. (Thom C. J., Ganganath and Braund JJ.) Emperor v. Afaq Hussain Jauhar.

AIR 1941 All 70 : (1940) ALJ 885 : ILR (1941) All 186 : 1940 AWR (HC) 642 : 13 RA 337 : 192 IC 466 : 42 Cr LJ 298 (FB).

——Fact that conviction is difficult to secure, if shows that order itself was without jurisdiction.

It is necessary to distinguish carefully between the jurisdiction of the Magistrate to make an order under S. 144, Criminal P. C., and a possible practical difficulty in showing that it has been disobeyed. It does not follow that because it is difficult for the Crown to secure a conviction, that the order itself was made without jurisdiction. (Henderson and Khundkar JJ.) Niharendu Dutt v. Emperor.

AIR 1939 Cal 703 : 43 CWN 1061 : 12 RC 318 : ILR (1939) 2 Cal 507 : 184 IC 856 : 41 Cr LJ 105.

Where an offence under S. 188, I. P. C., is committed by disobedience of orders of the Sub-Magistrate issued under S. 144, Cr. P. C., no cognizance can be taken of this case without a proper complaint by that Magistrate as enacted by S. 195, Cr. P. C., and in any case, the very Sub-Magistrate cannot hear and decide the case himself. (Pandrang Row, J.) Veerappa Moopan, In re.

AIR 1939 Mad 496 : 49 MLW 474 : 1939 MWN 340 : (1939) 1 MLJ 573 : 12 RM 263 : 183 IC 240 : 40 Cr LJ 752.

——Ss. 144, 195, 487 — Magistrate passing order under S. 144, Criminal P. C., if can take cognizance of offence under S. 188, Penal Code — Proper procedure — Penal Code (Act XLV of 1860), S. 188.

A Magistrate passing an order under S. 144, Criminal P. C., cannot take cognizance of an offence under S. 188, I. P. C., for disobedience of his own order; he must make a complaint under S. 195; S. 487 of the Criminal P. C., prohibits the trial of the case under S. 188 in these circumstances by the Magistrate. (Lort-Williams and Jack, JJ.) Lokendra Lal Pal Choudhury v. Emperor.

(1936) 164 IC 434 (2) : 61 CLJ 579 : 39 CWN 1059 : 9 RC 207 : 37 Cr LJ 936.

——Order for injunction must be absolute and definite and not conditional.

CRIMINAL P. C. (V of 1898), S. 144 — 7. Disobedience of order

Section 144, Criminal P. C., Cls. (a) and (b) do not contemplate the passing of a conditional order to be made absolute later on. The order for injunction under S. 144, Criminal P. C., must be an absolute and definite order, and it must be left to the party to apply for rescinding the order having recourse to the procedure laid down in sub-ss. (4) and (5) of the said section.

Where the order is in the following terms :".... .....either to refrain from doing any of the acts set forth above.....or to show cause, if any, against the said order" it is not an order which comes within the terms of S. 144, Criminal P. C., at all. The order is not definite and no charge can be sustained under S. 188, I. P. C., for violating such order. (R. C. Mitter J.) Emperor v. Bhola Giri Mohunt.

AIR 1936 Cal 259 : 40 CWN 640 : 8 RC 662 (2) 63 CLJ 137 : 162 IC 827 : 37 Cr LJ 696.

——Knowledge of order — Question of evidence — Prosecution, nature of proof required.

The question whether a person has knowledge of an order promulgated under S. 144 is a matter of evidence. Where it appears that the order had been promulgated for several weeks, that there had been disturbances in the city, and that notices containing the order had been posted up at various places in the city and none of the accused persons pleaded ignorance of the order when making statements in the Magistrate's Court, it is scarcely conceivable that they had no knowledge of the order passed.

In such cases, the prosecution cannot be expected to prove everything that takes place in the minds of the accused. They can only prove the circumstances which will enable the Court to infer either that the accused knew of the order or that the accused did not know of it. (Kendall, J.) Shander v. Emperor.

AIR 1935 All 552 : 7 RA 901 : 1935 AWR (HC) 590 : 155 IC 185 : 36 Cr LJ 639.

——Penal Code (Act XLV of 1860), S. 188 — Magistrate arguing from the general to the particular — Legality — 'Promulgated', meaning of.

Where the accused, on being served with a notice under S. 144, Criminal P. C., to abstain from constructing or proceeding with the construction of a certain work, disobeyed the order and was charged under S. 188, I. P. C., and the Magistrate, in convicting him, condemned such conduct as that of the accused to tending to cause an affray:

Held, that the Magistrate erred in arguing from the general to the particular whereas he ought to have come to the conclusion from the actual facts of this case as to whether or not there was a tendency for an affray to be caused.

Quaere.—Whether the order made on an ex parte application and privately served on the accused under S. 144, Criminal P. C., can be right-

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ly described as an order 'promulgated', by a public servant lawfully empowered to promulgate such order. (Costello, J.) Chuni Lall Motilall v. Emperor.

AIR 1932 Cal 868 : 36 CWN 792 : Ind Rul (1932) Cal 648 : 139 IC 739 : 33 Cr LJ 829.

——Order of injunction — Must be clear and definite.

An order in the nature of an injunction under S. 144, Criminal P. C., should be clear and definite and free from any kind of ambiguity and if it is indefinite, it would not be right to prosecute anybody for disobeying it. (Lort-Williams and S. K. Ghose JJ.) Ambika Nanda v. Benode Behari.

AIR 1932 Cal 288 : 36 CWN 248 : Ind Rul (1932) Cal 383 : 137 IC 816 : 33 Cr LJ 518.

——When an order was passed under S. 144 which amounted to an order to cut the bandh the assembly resisting that is not unlawful.

A compromise decree to which the Secretary of State was a party was passed providing that if the work of excavation and of bunding the eastern bank of a certain stream was not completed by a certain time the injunction issued for the maintenance of the western bandh would be cancelled and the respondents (that is, the plaintiffs in the suit for injunction) would raise no objection to the defendants or any other person cutting the western bandh and bunding the eastern bank after the period allowed had expired; the eastern bank was damaged and one of the defendants in the suit for injunction applied to the Collector for permission to remove the western bandh. The Collector as District Magistrate issued order under S. 144 to the public generally to abstain from interfering when the western bandh was cut as conditions had arisen when it was necessary to cut the western bandh. In the result at the time of cutting the bandh a riot took place and some of the villagers who had taken part in preventing the cutting of bandh were convicted under S. 147, I. P. C., and the common unlawful object was stated to be resisting the cutting of the bandh.

Held, that in effect the order really amounted to an order to cut the bandh. The District Magistrate who in his capacity as Collector represented the Secretary of State in the civil suit and who was in effect a party thereto was taking upon himself to construe the consent decree of the Civil Court and to say that the circumstances had arisen which justified the dissolving of the injunction of the Civil Court and the cutting of the western bandh. The District Magistrate had no right to usurp the functions of the Civil Court in this way; the injunction was still subsisting and could only be dissolved by the Court which granted it and it was the High Court alone which could construe its own decree and say whether the circumstances had arisen which would justify

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the dissolution of the injunction and the cutting of the bandh.

Held further, that in the result there was no order in express terms to cut the bandh and no one was entitled to cut the bandh in view of the Civil Court's injunction which was still subsisting and this being so the common objects set out in the charge had not been established and therefore the conviction and sentence passed on the petitioners must be set aside. (Greaves and Panton, JJ.) Abdul Jalil v. Emperor.

AIR 1924 Cal 996 : 84 IC 343 : 28 CWN 732 : 26 Cr LJ 279.

——Scope of—Magistrate passing order under — Whether a Court.

A Magistrate passing an order under S. 144, Criminal P. C., is not acting as a "Court" and subs. (7) of S. 195 is inapplicable to such a case. 6 M 203 FB; 14 WR Cr 46, Foll. and 35 MLJ 454, Diss.

Obiter: It is impossible that while securing orders under S. 144 from interference except by the successor of the Magistrate passing them or by some superior Magistrate, the Sessions Judge should have been given the power to render the order practically nugatory by declining to allow a prosecution for disobedience to it. (Ayling and Ramesam JJ.) Nataraja Pillai v. Rangaswami Pillai.

AIR 1923 Mad 473 : 44 MLJ 328 : 17 LW 409 : 72 I C 536 : 1923 M W N 240 : 32 M L T (HC) 214 : 24 Cr LJ 424.

——Disobedience of — Order — Legality of the order — If can be questioned in proceedings under S. 188 of the Penal Code.

The legality of the order under S. 144 of the Code can be questioned in proceedings under S. 188 of the Penal Code taken against the accused for disobedience of the order. (Newbould and Ghose JJ.) Jiaratdin Mohammed v. Emperor.

AIR 1921 Cal 258 : 34 CLJ 578 : 67 IC 200 (1) : 23 Cr LJ 376.

——Ss. 144 and 195 — Disobedience — Rival hat — Order prohibiting — Penal Code, S. 188.

An order prohibiting the holding of a rival hat on certain days near an old hat is not ultra vires and disobedience to such an order is punishable under S. 188, I. P. C., on sanction being given under S. 195 of the Cr. P. C. (Fletcher and Walmsley, JJ.) Nagendra Nath Biswas v. Rakhal Das Sinha.

AIR 1919 Cal 108 : 23 CWN 141 : 49 IC 97 : 20 Cr LJ 113.

——Disobedience — Order under.

A prosecution for disobedience of an order under S. 144, where there is no suggestion that the petitioners were in any sense creating a disturbance must prove infructuous and an order directing such prosecution must be set aside.

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(Teunon and Richardson, JJ.) Sujal Biswas v. Samiruddin Mandal.

AIR 1919 Cal 996 : 46 IC 515 : 22 CWN 599 : 19 Cr LJ 739.

——Ss. 144 and 195 — Disobedience — Penal Code, S. 188 — Prohibition order passed without evidence — Prosecution for disobedience of order not properly passed — Cognizance of case under S. 188 by the same Magistrate who passed the order disobeyed.

A servant of the first party filed a complaint before the Sub-Divisional Magistrate stating that the second party was about to construct a drain and if the party opposed the other there was a likelihood of a breach of the peace; on this the Magistrate without taking any evidence issued an injunction under S. 144, Cr. P. C., against the second party. On the next day of the complaint of the same man the Magistrate summoned the second party under S. 188, I. P. C. Subsequently he transferred the case to a Magistrate with second class powers and again withdrew it from his file and sent it to the additional District Magistrate. Held, that the order under S. 144, should never have been passed, that the proceedings were wholly irregular, that in summoning the second party under S. 188 the Sub-Divisional Magistrate was taking cognizance of the offence under S. 476, Cr. P. C. or an application for sanction under S. 195, Cr. P. C., was necessary. The proceedings under S. 188, I. P. C., were also set aside and also the order under S. 144, which was the basis of those proceedings although that order was not in force. (Chitty and Walmsley, JJ.) Chandra Kantha Kanji Lal v. Emperor.

AIR 1916 Cal 69 : 20 CWN 981 : 36 IC 144 : 17 Cr LJ 464.

——Disobedience to order under — When offence under S. 188, Penal Code. See Penal Code, S. 188.

2 Cr LJ 760 (Cal).

Disobedience of order under S. 144, not duly promulgated — Offence under S. 188, Penal Code. See Penal Code (1860), S. 188.

2 Cr LJ 719 (Lah).

——Oral order under.

An order under S. 144 must be in writing and must be duly served or promulgated to the public. Where the Magistrate orally issued the order to stop the quarrying and the order was disobeyed, the order being illegal, the accused's conviction under S. 188, I. P. C., cannot stand. (Chatterji, J.) Crown v. Mul Raj.

84 PLR 1905 : 36 PR 1905 Cr : 2 Cr LJ 365.

——Prohibition of collection of rents—Penal Code, S. 188.

An order cannot be passed under S. 144, Criminal P. C., directing certain persons to refrain from collecting rents from the tenants. Disobedience to such an order will not render person liable to prosecution under S. 188, Penal Code. (Hender-

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son and Geidt, JJ.) Premchand Singh Roy v. Dharmadas Singh Roy.

9 CWN 392 : 2 Cr LJ 166.

——Disobedience of order made under S. 144 directing holding of hat on certain days — Disobedience is not punishable under S. 188, Penal Code. See Penal Code, S. 188.

1 Cr LJ 778 (Cal).

8. Dispute about land and water.

See also Note 22—Ss. 144, 145 and 107.

——Ss. 144, 145—Scope—Dispute relating to possession of land—Likelihood of breach of peace—Proceedings under S. 145 are proper.

Where the dispute between the parties about possession of two plots of land is likely to cause breach of the peace the right course is to take proceedings under S. 145, Cr. P. C. Proceedings under S. 144, Cr. P. C., is a poor substitute for proceedings under S. 145, Cr. P. C., which settles the matter once for all as far as Criminal Courts are concerned, as ordinarily no order under S. 144 remains in force for more than 2 months from the making thereof. (Lakshmi Narain J. C.) Padmanava Bhattacharyya v. Bidhu Bhusan Das.

AIR 1952 Tripura 26 : 1953 Cr LJ 81.

——Dispute between Collector and District Magistrate and private person, as to title to lease right to take sand from river — Criminal Court of the District is hardly a tribunal to decide dispute in proceedings under S. 144. (Harries C. J. and Bose J.) Kalipada Das v. The State.

AIR 1951 Cal 207 : 51 CrLJ 1575.

—Right to recite sankalpam to persons bathing in puskarni — If right to water under S. 147 — Dispute as to such right — Proceedings under S. 144. See ibid, S. 147.

AIR 1950 Mad 593 : 51 Cr LJ 1508.

——Institution of proceedings under — If genuine dispute can be assumed.

It is hardly justifiable to assume that there is a genuine dispute between landlord and tenant, merely because proceedings under S. 144 have been instituted. (Swanzy, Member) Thakur Prasad v. Jagu Gope.

(1945) 11 BR 118 (Rev).

——Dispute regarding land can be dealt with under S. 144—Nature of order.

Dispute regarding land can also be dealt with under S. 144 provided that in the opinion of an authorised Magistrate, "there is sufficient ground for proceedings under this section and immediate apprehension or speedy remedy is desirable". Orders passed under this section, however, are merely "temporary orders in urgent cases of apprehended danger" and cannot remain in force for more than two months (unless in certain cases, the Provincial Government, by notification in the Official Gazette otherwise directs). They are further not always passed in strict conformity with

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the legal rights of private parties, but may in proper cases constitute an interference with private rights required in a temporary emergency. Nor is it to be expected, having regard to their temporary and urgent character, that they would be passed after taking evidence of possession in the manner laid down in S. 145 (4) so as to entitle the Magistrate judicially to pronounce on the fact of possession. This is the reason why such orders are often said to decide nothing about the respective rights of parties. (Dhavle J.) Madho Singh v. Emperor.

AIR 1942 Pat 331 : 23 PLT 243 : 8 BR 670 : 14 RP 658 : 200 IC 316 : 43 Cr LJ 637.

——Ss. 144, 145 — Dispute about land — Proceeding under S. 145 is proper — Ex parte order under S. 144, propriety.

On an application alleging that there was a dispute likely to lead to a breach of the peace about the possession of a certain plot of land, proceedings under S. 145, Criminal P. C., should be instituted. An ex parte order under S. 144, is ill-advised and an order to the Police to reap the paddy standing on the land is absolutely illegal. When the order under S. 144 has been set aside and no further proceedings under S. 145 or 146 are taken, it is illegal to direct the Police to thrash the paddy, to sell it and to deposit the money in Court to lie there indefinitely. (Henderson J.) Kalipada Roy v. Satish Chandra Hui.

AIR 1942 Cal 66 (1) : 45 CWN 1090 : 14 RC 477 : 198 IC 559 : 43 Cr LJ 396.

——Ss. 144, 145 — Action under S. 145, when shouid be taken.

When, in the course of a proceeding under S. 144, Criminal P. C., the Magistrate finds that there is a bona fide dispute as to possession of land likely to cause a breach of the peace, he is bound immediately to take action under S. 145. (Davis J. C. and Weston J.) Viru Kamu v. Dewandai Jhamandas.

AIR 1940 Sind 158 : 13 RS 110 : ILR (1940) Kar 508 : 190 IC 618 : 41 Cr LJ 952.

——Ss. 144, 145—Proceedings under S. 144 should not be substituted for proceedings under S. 145.

If there is a dispute regarding possession of land likely to cause a breach of the peace and requiring a definite decision regarding the possession of land, the normal procedure for the Magistrate to follow is that laid down in S. 145, Criminal P. C., unless the claim of one party is on the face of it a mere pretence so that it can be said that there is no real dispute. Though a Magistrate's powers under S. 144 are very wide, the Court must deprecate the habitual and unjustifiable use of S. 144, as a substitute for Ss. 107 and 145. A summary procedure under S. 144, should not be substituted in cases in which without possible doubt proceedings under

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S. 145 can be taken. (Rowland, J.) Domon Gope v. Het Narain.

AIR 1940 Pat 382 : 7 BR 54 : 13 RP 226 : 190 IC 425 : 41 Cr LJ 907.

——Bona fide dispute as to possession of land—Proper way is to proceed under S. 145 and not under S. 144, Cr. P. C. (Agarwala, J.) Bhikali Tewary v. Achaibarkuer.

AIR 1940 Pat 471 : 21 PLT 326 : 6 BR 464 : 12 RP 618 : 187 IC 349 : 41 Cr LJ 451.

——Ss. 144, 145—No real dispute as to possession—Imminent danger of breach of peace— Order under S. 145, when becomes necessary.

It is only where there is a dispute likely to cause a breach of the peace concerning any land or water or boundaries thereof and the dispute requires to be decided on evidence that resort to S. 145, Cr. P. C., becomes necessary and for this purpose, the dispute has to be a real dispute and not a mere pretence on behalf of one of the contesting parties. Where there is no such real dispute, orders under S. 144 are not improper. There may even be occasions where an order is first appropriately passed under S. 144 and the proceeding is afterwards converted into one under S. 145, in order to pass an even more appropriate and permanent order.

Where A is in possession of the land and continuing it and B is trying to take the possession of the same land and the Police report that there is imminent danger of a breach of the peace, an order under S. 144 is proper one as there is no real dispute about possession at all. (Dhavle, J.) Bhuneshwar Prasad v. Rommoy Roy.

AIR 1940 Pat 492 : 6 BR 428 : 12 RP 588 : 187 IC 139 : 41 Cr LJ 417.

——Ss. 144 and 147—One party's right to drain off surplus water enclosed by alang of other party—Other party having right of irrigation—Dispute—Magistrate issuing notice under S. 144—Held, case fell within S. 147 and not S. 144.

The points which appeared to arise for inquiry on the report of the Sub-Inspector were whether one party had the right to drain off surplus water by cutting the alang erected by the other party and if so, whether the other party having a right of irrigation were entitled to require that the cutting should be limited in depth so as not to allow the escape of all the water, and damage to the bandh and thus affect their irrigation. On receipt of the Sub-Inspector's report the Sub-Divisional Officer issued notices under S. 144, Criminal P. C., to both parties in order to prevent immediate breach of the peace:

Held, that this was a case falling exactly within the provisions of S. 147, Criminal P. C., under which the Magistrate should have proceeded to make a judicial determination of the dispute.

Held, also that the notices issued should be considered equivalent to the notices to be issued

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under S. 147 (1), Criminal P. C. (Rowland, J.) Inderdeo Narayan v. Durga Prasad Singh.

AIR 1936 Pat 59 : 17 PLT 22 : 2 BR 263 (2) : 8 RP 397 (2) : 160 IC 945 : 37 Cr LJ 378.

——Ordinarily unless the facts are on the face of them quite clear, a proceeding should be drawn up under S. 145 for the purpose of investigating the question of actual possession to land. (Mullick, J.) Kishori Jha v. Anand Kishore Jha.

AIR 1930 Pat 162 : 1930 Cr C 258 : 126 IC 293 : IR 1930 Pat 597 : 10 PLT 862 : 31 Cr LJ 1005.

——Where a person simply wants to enforce his right to possession of property, the criminal Courts ought not to lend him their aid under S. 144. (Devadoss, J.) Vythilinga Mudaliar v. Ramanuja Mudaliar.

AIR 1929 Mad 845 : 119 IC 166 : 2 M Cr C 302 : 1929 Cr C 613 : 30 Cr LJ 1010.

——Where a Magistrate on the materials before him finds that there was no bona fide dispute as to actual possession, but the opponent was merely trying to get into possession, order under S. 144 is warranted and is the best means of preventing the imminent breach of the peace. (Macpherson, J.) Luchman Das v. Ramchhabilal Missir.

AIR 1929 Pat 415 : 115 IC 688 : 10 PLT 542 : 12 AI Cr R 309 : 1929 Cr C 198 : 30 Cr LJ 510.

——Section 144 is applicable only to temporary orders in urgent cases of nuisance or apprehended danger; it is not applicable in cases where there is a dispute as to land for the settlement of which S. 145 provides the proper remedy. 32 C. 936 and 48 I. C. 342, Ref. (Kulwant Sahay, J.) Akal Mahton v. Mahabir Mahton.

AIR 1924 Pat 145 : 75 IC 531 : 5 PLT 90 : 1 Pat LR Cr 223 : 24 Cr LJ 947.

——Ss. 144 and 145—Scope of—Proceedings under Ss. 144 and 145—Distinction.

Where a probability of breach of peace exists over a dispute concerning immovable property a proceeding under S. 145 is proper. A proceeding under S. 144 relates only to a temporary order in emergent cases of apprehended danger. (Sultan Ahmad, J.) Jhaman Mahton v. Thakurai Mahton.

AIR 1920 Pat 219 : 1 Pat LT 369 : 57 IC 449 : 2 UPLR (Pat) 192 : 21 Cr LJ 625.

——Ss. 144 and 145— Scope of— Dispute as regards land—Propriety of proceeding under S. 144, Cr. P. Code.

Where the dispute concerns a plot of land the only effective way in which it can be settled so far as the Criminal Court is concerned, is by instituting a proceeding under S. 145, Cr. P. Code. The practice of resorting to proceedings under 144, Cr. P. Code in cases of disputes concerning lands has been all along condemned. The order under S. 144 was therefore set aside. (Jwala Prasad, J.) Tarapada Bhattacharjee v. Emperor.

AIR 1920 Pat 176 : 1 Pat LT 72 : 55 IC 193 : 21 Cr LJ 241.

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——Ss. 144 and 145—Scope of —Immoveable property—Breach of the peace.

A temporary order under S. 144 might be proper when the right of a party is clear and there is a threatened invasion of that right by another party. But where there is a doubt as to the right of the parties to be in possession of immoveable property, the proper procedure is under S. 145 of the Cr. P. Code or under S. 146. It is inequitable by an order under S. 144, to usurp the functions of the Civil Court and restrain one of the parties when the matter in dispute admits of reasonable doubt. (Jwala Prasad, J.) Gouri Dutt v. Gobind Singh.

AIR 1920 Pat 496 : 1 Pat LT 44 : 53 IC 829 : 20 Cr LJ 829.

——Ss. 144 and 145— Scope of— Dispute as to land.

S. 144 of the Cr P. Code is applicable only to temporary orders in urgent cases of nuisance or apprehended danger and not to cases where there is a dispute as to land for the settlement of which S. 145 provides the appropriate remedy. (Mullick, J.) Lachman Ram v. Dhiru Dusadh.

AIR 1918 Pat 300 : 48 IC 342 : 19 Cr LJ 1002.

——Ss. 144 and 145 — Scope — Possession in dispute—Procedure.

Where the question of possession is in dispute the proper procedure is to act under S. 145 but in cases of great emergency a Magistrate can act under S. 144. (Rigg, J. C.) Nga Po Hmi v. Mi Shwe Tha.

AIR 1917 Upp Bur 5 : (1917) 3 UBR 17 : 42 IC 327 : 18 Cr LJ 967.

——Ss. 144, 145—Applicability— Disputed question of possession—Proper order.

In a dispute regarding possession of land the proper procedure to be adopted by the Magistrate is to pass an order in a proceeding under S. 145, deciding the question of possession on evidence, and not an order in a proceeding under S. 144. (Mitra and Holmwood, JJ.) Parkar Mahton v. Ram Khelwan.

11 CWN 271 : 5 Cr LJ 76.

9. Duties and powers of court.

——Dismissal of application—Effect.

Where the application praying for restoration of possession under S. 144 was dismissed as it was not entertainable under that section the parties should be restored to the position in which they were before the proceedings started. (Shinde, J.) Bhagwandas v. Dhannulal.

AIR 1951 Madh B 91 : 52 Cr LJ 560.

——Duty of Magistrate is not to deprive person of lawful rights but to restrain illegal interference with same—Action should not be against peaceful citizens but against potential law breakers. (U Aung Tha Gyaw, J.) Directors of the Sooratee Bara Bazar Co., Ltd. v. The Union of Burma.

1948 Bur LR 365.

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——Magistrate cannot usurp function of Civil Court.

The Magistrate's jurisdiction under S. 144, is not a jurisdiction to assume the functions of the Civil Court though he can decide questions of possession and of rights of user by appropriate proceedings under Chap. XII of the Criminal P. C. (Dhavle, J.) Ram Narain v. Parmeshar Prasad.

AIR 1942 Pat 414 : 8 BR 722 : 15 RP 28 : 23 PLT 644 : 200 IC 776 : 43 Cr LJ 722.

——Order under S. 144— Jurisdiction to pass — "Material available", source of.

If on the material available to him, the Sub-Divisional Magistrate thinks that an order under S. 144, of the Criminal P. C., is necessary, it is his duty to pass such an order. Whether the material is gathered by himself or by the Sub-Magistrate is irrelevant. (Horwill, J.) Nainamalai Goundan v. Ramasami Goundan.

AIR 1942 Mad 20 : 14 RM 462 : 1941 MWN 867 (1) : 198 IC 109 : 43 Cr LJ 372.

——Restriction under S. 144, limits of—Delegation of power by Magistrate.

In a country which enjoys liberty of the press, a person is entitled in his newspaper to publish any news, and make any comments, which he chooses, provided that he does not infringe any provision of law. A Magistrate acting under S. 144 may no doubt restrict that liberty. But he should only do so if the facts clearly make such restriction necessary in the public interest and he should not impose any restriction which goes beyond the requirements of the case.

Magistrate forbidding under S. 144, a newspaper from publishing certain news, must say in precise and definite language what it is that he is directing the person to abstain from doing by the order made under S. 144, and to say that he is to refrain from doing something which a third party does not approve is not an order which complies with the section. It is for the Magistrate himself, and not for the Public Relations Officer to say what is the character of the publication which is forbidden. The delegation of his discretion to another officer is illegal. (Beaumont C. J. and Sen, J.) Ardeshir Phirozshaw, In re.

AIR 1940 Bom 42 : 41 Bom LR 1253 : 12 RB 352 : 186 IC 477 : 41 Cr LJ 319.

——Ss. 144, 145— Magistrate's discretion to adopt any proper method to meet emergency.

It is always enough that the Magistrate adopts any proper method to meet the emergency if there happen to be several methods to choose from; his choice is not to be considered in the light of the fact that at a later stage when the emergency can be viewed on a different basis, another method may be adjudged to have been a more proper or the most proper or rather the most satisfactory method in the circumstances.

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The Magistrate must maintain the peace of his District as between the warring parties until the forthcoming decision of the Civil Court, by the means at his disposal which he shall adjudge most appropriate to and most effective in the circumstances. (Macpherson, J.) Harihar Singh v. Upendranath Banarji.

AIR 1934 Pat 308 : 13 Pat 76 : 6 RP 676 : 149 IC 959 (1) : 35 Cr LJ 1009.

——In the proceedings under S. 144, it is not open to the Sub-Magistrate to order the Police to carry out the decision of the Civil Court according to his interpretation of it. (Lakshmana Rao, J.) Krishnaswamy v. A. Srinivasachariar.

1934 MWN 742.

——Scope.

Where the Civil Court has passed an order of temporary injunction against one party, implying that, in its opinion, the petitioner has a prima facie right, it is the duty of Criminal Courts to respect the opinions of Civil Courts and in taking steps to preserve peace, to take action only against those who are infringing the rights of others and protect those who wish to exercise their rights and not prohibit the latter's lawful enjoyment of rights. The High Court views with disapproval the use of S. 144 for anything of the nature of a permanent expedient. The word 'alter' in S. 144 (4) Cr. P. C., does not justify the substitution for or addition to the party against whom the original order is directed. Orders under S. 144 are void as mere extensions and can be valid only as fresh orders, 27 M. L. J. 628; 3 Pat L.J. 130 followed. (Ramesam, J.) Murari Naicken v. Aiyasami.

AIR 1923 Mad 15 : 16 LW 452 : 69 IC 369 : 1922 MWN 612 : 23 Cr LJ 689.

——Temporary order—Grounds for issuing.

The fact that a disupte demands a permanent injunction for its final settlement should not be a ground for withholding a temporary order. (Shah and Hayward, JJ.) Cawasjee Jehangir Readymoney, In re.

AIR 1920 Bom 367 : 22 Bom LR 157 : 62 IC 409 : 22 Cr LJ 521.

——Temporary order in case of urgency— Jurisdiction.

Where a Magistrate apprehends that with the force at his disposal, a breach of the peace cannot be prevented without grave danger he can pass a temporary order under S. 144 stopping a procession. (Sankaran Nair and Ayling, JJ.) Arumuga Mudali v. Koo Perumalaswami Chetty.

AIR 1914 Mad 138 : 22 IC 174 : 15 Cr LJ 30.

10. Duration of order.

——Order under—Interference—Question of apprehension of breach of peace justifying an order under S. 145 must be left to the Magistrate concerned— No interference by way of writ unless order is mala fide or absurd.

CRIMINAL P. C. (V of 1898), S. 144 —10. Duration of order

See Constitution of India, Art. 19 (1) (a).

AIR 1953 All 577 : 1953 Cr LJ 1358.

——Duration of order.

Limiting the duration of order under the section, except under special circumstances referred to in the section, to two months is with regard to orders that are valid and orders that are made absolute. If a proceeding initiated under S. 144, is cancelled as being defective, that will not prevent the Magistrate from initiating another valid proceeding and passing therein an effective order to enure in its operation, for the statutory period of two months: AIR 1925 Cal. 625 and AIR 1936 Pat. 59, Ref. (Ray, J.) Gauri Shankar Rai v. Emperor.

..AIR 1947 Pat 290 : 1946 P W N 169 : 13 B R 201 : 228 IC 378 : 48 Cr LJ 93.

——Period of two months during which order remains in force—Starting point.

It is settled law that the period of two months during which the order under S. 144, Criminal P. C., remains in force runs not from the date the Magistrate passes his order but from the date on which the first notice is issued. (Dhavle, J.) Ram Narain v. Parmeshar Prasad.

AIR 1942 Pat 414 : 8 BR 722 : 23 PLT 644 : 15 RP 28 : 200 IC 776 : 43 Cr LJ 722.

——Order, how long effective.

An order under S. 144, Criminal P. C., can at the most be effective for two months. (Leach, C. J. and Happell, J.) Srinivasa Iyengar v. Ramanujachariar.

AIR 1941 Mad 493 : ILR (1941) Mad 544 : 1941 MWN 250 : (1941) 1 MLJ 322 : 53 MLW 315 : 14 RM 512 : 198 IC 793 : 43 Cr LJ 433.

——Where an order under S. 144 has expired, the Local Govt., cannot resuscitate it by extension under S. 144 (3). (Sale, J.) Chanan Singh v. Emperor.

AIR 1940 Lah 459 : 42 PLR 786 : 13 RL 272 : 191 IC 162 : 42 Cr LJ 90.

——Order under S. 144—Breach of— Order withdrawn—Person, if can be charged and tried for breach, subsequently.

An order made under S. 144, Criminal P. C., cannot operate for more than two months unless Govt. otherwise directs. When such an order is withdrawn on a particular date, the position is exactly the same as if the original order had been restricted to that date, and, a person can, therefore, be charged with committing an offence against the order at the time when it was in operation. The fact that he was tried after the order had ceased to be in operation is entirely irrelevant. (Beaumont C. J. and Sen, J.) Emperor v. Rajendrasing Ramsing.

AIR 1940 Bom 195 : 42 Bom LR 356 : 13 RB 35 : 188 IC 744 : 41 Cr LJ 675.

——Ss. 144, 145—Repetition of order under S. 144 on ground of maintaining status quo against suc-

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cessful party—Propriety— Order spending itself—If can be set aside.

Held, that to repeat an order under S. 144, Cr. P. C., on the ground of maintaining the status quo was to compel the unsuccessful party to resort to the Civil Court even though the Criminal Court might have done nothing to look into the rights of the parties, and further, indirectly to prolong the effect of the original order beyond the period of two months fixed in Sub-S. (6) of the section. Such a use of the section was altogether unwarrantable. An order which had been deliberately passed under S. 144 when the Magistrate knew and had been told that he should proceed under S. 145, if necessary, could not be left alone merely because it was time-expired, for it was impossible to encourage the Magistrate to use his powers in that way. (Dhavle, J.) Bindeshwari Singh v. Raghunandan Mahto.

AIR 1940 Pat 559 : 13 RP 12 : 21 PLT 413 : 6 BR 648 : 188 IC 330 : 41 Cr LJ 578.

——An order under S. 137 (3), Criminal P. C., is not like an order under S. 144, Criminal P. C., which spends itself in 60 days. (Varma, J.) Kalyanmal Mathur v. Emperor.

AIR 1936 Pat 577 : 3 BR 69 : 9 RP 186 : 165 IC 542 : 37 Cr LJ 1159.

——Ss. 144, 145— Period of sixty days— When begins to run—Dispute as to possession of immovable property—Proceeding under S. 145 should be preferred to that under S. 144.

The period of sixty days referred to in S. 144, Criminal P. C., begins to run from the date on which the notices are issued:

Held, on the materials before the Court, that it would not interfere after the order had spent itself.

Where the dispute is with regard to possession of immovable property, a proceeding under S. 144 of the Criminal P. C., is a poor substitute for a proceeding under S. 145 which settles once for all so far as the Criminal Courts are concerned, the question of possession with regard to a particular piece of immovable property. Such cases should be decided under S. 145. (Varma, J.) Puran Singh v. Ramjhari Koer.

AIR 1935 Pat 224 : 1 BR 387 : 7 RP 538 : 155 IC 88 : 36 Cr LJ 655.

——An order under S. 144 being operative only for two months need not be set aside after the period of 2 months is over. (Bucknill and Kulwant Sahay, JJ.) Munni Lal v. Gati Ahir.

AIR 1925 Pat 514 : 88 IC 845 : 6 PLT 746 : 3 Pat LR Cr 70 : 26 Cr LJ 1229.

——Rescission and extension.

——Second order same as first—Additional parties in second one—Total period exceeding two months —Order is illegal.

The period during which an order under S. 144 remains in force is two months only and it cannot

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be extended beyond that period by the Magistrate. To draw up the same order once more merely adding to the parties affected is an attempt to evade the provisions of cl. (6) of S. 144 and is illegal if the total period exceeds two months. (Newbould and Mukerji, JJ.) Ashutosh Roy v. Haris Chandra Chatopadhya.

AIR 1925 Cal 625 : 86 IC 810 : 29 CWN 411 : 26 Cr LJ 874.

——Duration—Extension for indefinite time.

Before the expiry of the period of the order the local Government passed an order directing that the order should remain in force until cancelled by a notification in the Gazette. Held, that the Legislature has not limited the time for which the force of the order may be extended and under the terms of the section, the Local Government can extend the order so long as the danger which it apprehended continued to exist. (Daniels, J.) Bhure Mal v. Emperor.

AIR 1923 All 606 : 45 All 526 : 73 IC 801 : 24 Cr LJ 689.

——Duration— Persons to whom addressed — Presumption.

If an order under S. 144 specifies no time during which it is to be in force, the reasonable presumption is that it would operate for two months and not indefinitely. An order under S. 144 (3) may be addressed to the public generally when visiting a particular place but not to the public indefinitely. (Sadasiva Aiyar and Odgers, JJ.) Ponnappa v. Sri Vanamamalai.

AIR 1920 Mad 847 : (1919) MWN 372 : 10 LW 480 : 53 IC 483 : 20 Cr LJ 755.

——Duration— Temporary orders— Powers to renew—Notification of Government.

S. 144, Cr. P. C., applies to all temporary orders in urgent cases of nuisance; extending the period during which they are to continue for more than 2 months is without jurisdiction in the absence of Government Notification. Where an order itself does not set forth the materials on which it is based or no urgency is indicated, it is without jurisdiction. (Sankaran Nair and Ayling, JJ.) Govinda Chetty v. Emperor.

AIR 1914 Mad 697 : (1913) MWN 1003 : 21 IC 898 : 27 MLJ 628 : 14 Cr LJ 658.

——Duration—Permanent injunction not provided by law— Revision— Government of India Act, S. 107.

S. 144 authorises the passing of provisional order to get over temporary emergencies and does not authorise Magistrates to grant a permanent injunction prohibiting processions for an indefinite period. The High Court could interfere under S. 107 of the Government of India Act with an improper order. (Miller and Sadasiva Aiyar, JJ.) Govinda Chetty v. Perumal Chetty.

25 MLJ 370 : 21 IC 381 : 14 Cr LJ 589.

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——Extension of period of two months.

A Magistrate issued a notice under S. 144, Cr. P. Code against a person not to do a certain thing and asking him to show cause on subsequent day against the order. On cause being shown, he refused to withdraw the order. Held, that the confirmation of the order on a subsequent day on cause being shown could not extend the period of its operation beyond the two months from the date of the order for issue of notice which was an order under S. 144. (Sharfuddin and Coxe, JJ.) Thomson v. Emperor.

13 CWN 195 : 5 MLT 96 : 4 Ind Cas 590 : 11 Cr LJ 12.

——Validity of prohibitory order which fails to mention the time it would remain in force.

An order under S. 144 only enures for a period of two months according to cl. (5) and, if there is nothing to the contrary in the order, the order is to be presumed to be limited to the period of those two months. The absence of any mention in the order as to its duration does not make it bad. (Rampini Actg. C. J., Brett, Stephen, Woodroffe and Mookerjee, JJ.) Ram Nath Chowdhry v. Emperor.

34 C 897 : 6 CLJ 186 : 11 CWN 942 : 2 MLT 474 : 6 Cr LJ 194 FB.

11. Effect of order.

——Ss. 144 and 145—Effect of prior order in proceedings under S. 144 on subsequent proceedings under S. 145.

Prior proceedings under S. 144 in respect of certain land—Order dissolving proceedings on finding that possession was with particular party—Such finding is not binding in subsequent proceedings under S. 145 in respect of same land and as such it is no bar to initiation of S. 145 proceedings if on proper material Magistrate is satisfied that there is a likelihood of breach of peace. (Mitter and Sen JJ.) Turu Majhi v. State.

AIR 1953 Cal 397 : 57 Cal WN 311 : 1953 Cr LJ 968.

——Order—Effect.

The order under S. 144 has no evidentiary value on the question of possession. (Rai, J.) Ram Prasad v. Shankar Prasad.

AIR 1951 Pat 90 : 52 Cr LJ 778.

——Order under—Evidentiary value.

Though the decision in a proceeding under S. 144 is not by itself proof of possession, yet it is a circumstance supporting an inference that the persons in whose favour the proceeding terminated would not be likely to allow his possession to be disturbed from any part of the property. (Meredith C. J. and Rai, J.) State v. Banwari Singh.

AIR 1951 Pat 473 : 52 Cr LJ 626.

——Order under, effect—Institution of proceedings under S. 147 during pendency of that order.

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See Criminal P. C. (1898) S. 147.

AIR 1951 Assam 77.

——Order under—Effect.

The Magistrate cannot by an order under S. 144, Cr.P.C., determine questions of title or possession; nor can such an order afford protection to a party against whom an order of injunction is passed. (Reuben and Das, JJ.) Subodh Gopal Bose v. Dalmia Jain and Co., Ltd.

AIR 1951 Pat 266.

——Order under—Is not by itself proof of possession.

Decision in a proceeding under S. 144, Criminal P. C., is not by itself proof of possession. But it is an important circumstance supporting an inference that the person in whose favour the proceeding terminated would not likely allow his possession to be disturbed from any part of the property. (Reuben and Narayan, JJ.) The King v. Jagdis Tiwari.

AIR 1950 Pat 79 : 28 Pat 576 : 30 PLT 314 : 51 Cr LJ 551.

——A doing work likely to cause annoyance—Direction to B not to do work.

When A is doing some work which may cause annoyance a direction to B not to do that work cannot have the effect of preventing A, who is not under the control of B, to stop the work. (Harries C. J. and Das Gupta, J.) Hulasmulla v. Tulsi Shaw.

53 CWN 344.

——Order under—Evidentiary value.

The judgment under S. 144 is not the evidence of possession of the party in whose favour the proceeding may have terminated, even though the Magistrate may have restrained the opposite party from going upon the land as a result of his decision that the other party was in possession. (Fazl Ali C. J. and Sinha, J.) Mohan Bikram Shaha v. Deo Narain Mahto.

AIR 1945 Pat 453 : 24 Pat 379.

——If a person in possession of property is temporarily dispossessed by an ex parte order under S. 144 and his application to set aside that order is dismissed only on ground that time for which order was in force expired, re-entry into possession by person so dispossessed cannot be wrongful dispossession of person who obtained temporary possession on account of ex parte order. (Horwill, J.) Pachayappa Udayan v. Ponna Goundan.

AIR 1943 Mad 402 : (1943) 1 MLJ 259 : 1943 MWN 178 : 56 MLW 220 : 16 RM 28 : 206 IC 630 : 44 Cr LJ 557.

——Expression of opinion as to title, value of.

Any expression of opinion on the question of possession in favour of one party or the other under S. 144, Criminal P. C., is not of a permanent nature. Such an order is passed in summary proceedings and cannot affect the real

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rights of the parties on the question of possession. (Varma, J.) Bhagwat Lal v. Bachu Pandey.

AIR 1940 Pat 364 : 6 BR 396 : 12 RP 554 : 186 IC 806 : 41 Cr LJ 384.

——Order under—Effect.

An order under S. 144, Criminal P. C., does not establish possession. (Mohamad Noor and Varma, JJ.) Udit Narayan v. Emperor.

AIR 1938 Pat 369 : 19 PLT 336 : 4 BR 750 : 11 RP 100 : 176 IC 715 : 39 Cr LJ 778.

——Orders cannot be taken as decisive of rights of the parties.

Order in proceedings under S. 144, Cr. P. C., cannot be taken as decisive of the rights of either of the parties but the nature of the proceeding and its conclusion may be referred to when the history of the property is in question. (Dhavle, J.) Jamuna Singh v. Zulmi Singh.

AIR 1938 Pat 455 : 11 RP 77 : 4 BR 690 : 176 IC 260 : 39 Cr LJ 721.

——Duty of Magistrate.

A definite order, or an order refusing to take action or rescinding an order under S. 144 must be ignored when evidence regarding possession is being taken under S. 145. 27 Cal. 785, Rel. on.; AIR 1925 Pat 610, Ref. (James, J.) Saddique v. Sheikh Mohind.

AIR 1930 Pat 556 : 129 IC 85 : 1930 Cr C 1100 : 32 Cr LJ 208.

——Where a Magistrate while making an order under S. 144 makes an incidental observation to possession of the property, the observation cannot have the force of an order under S. 145. (Bucknill and Kulwant Sahay, JJ.) Munni Lal v. Gatti Ahir.

AIR 1925 Pat 514 : 88 IC 845 : 6 PLT 746 : 3 Pat LR Cr 70 : 26 Cr LJ 1229.

——Order under S. 144 is not evidence of possession.

An order under S. 144, should not be treated as substantive evidence of possession in a case of rioting. No importance should be attached to a temporary injunction under S. 144, which is intended for emergencies. The judgment in such a case is certainly not admissible as a judgment. The fact of the order may be admissible under S. 13 of the Indian Evidence Act but having regard to the peculiar jurisdiction conferred by S. 144, no inference can be drawn from it as to the possession. (Mullick and Bucknill, JJ.) Gita Prasad Singh v. King-Emperor.

AIR 1925 Pat 17 : 81 IC 535 : 3 Pat LR Cr 27 : 5 PLT 656 : 1924 PHCC 29 : 25 Cr LJ 919.

——Effect of order—Declaration—Suit for—Order under S. 144 Criminal Procedure Code, against the Plaintiff—Plaintiff can sue for a declaration that he is entitled to use his property in any manner he pleases—Order under S. 144 furnishes cause of action for suit against defendants—Specific Relief Act, S. 42.

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Where the plaintiffs and the defendants are owners of adjacent properties and the defendants complained to the Police and obtained an order from a Magistrate under S. 144 of the Criminal Procedure Code preventing the plaintiffs from making use of their property by erecting certain buildings on the same, without notice to them or without an adjudication of the private rights of parties, it is open to the plaintiff to sue the defendants for a declaration that they are entitled to use their property as desired by them and for an injunction restraining the defendants from interfering with them in so doing; and the order under S. 144 of the Criminal Procedure Code is no bar to such suit.

The order under S. 144 would itself furnish the cause of action for the suit for declaration and injunction. (Ayling, Offg. C. J. and Odgers, J.) P. Baba Sah v. K. G. Mahomed Husain Sahib.

AIR 1922 M 123 : (1921) MWN 867 : 42 MLJ 179 : 15 LW 68 : 68 IC 180.

——An order under S. 144 Cr. P. C. has not the effect of disturbing either title or possession though it may prevent and does prevent the exercise of the rights which a person in possession would otherwise be entitled to exercise during the continuance of the said order. (Teunon, J.) Nasiran Bibi v. Salim Akanda.

64 IC 572 (Cal.).

12. Evidence.

——Ss. 144 and 145—Procedure— Order based on rent note—Evidence Act, S. 13.

The rent decree is to some extent evidence under section 13 of the Evidence Act as to the landlord having recognised the holding as being in possession of the 1st party (deft.) but that evidence is not conclusive as against the 2nd party in proceedings under S. 144 (who was not a party to rent proceeding.) The order of the Magistrate under S. 144 based on the rent decree is good inasmuch as passed with a view to prevent a breach of the peace which is then imminent. The more appropriate action however would be for the Magistrate after hearing the parties to convert his order under S. 144 into a proceeding under S. 145 of the Code so as to, once for all, determine the right of the contending parties to the possession of the land in question, unless it has been already determined by a Civil Court. 1 PLT 81; 1 PLT 44, Ref. (Jwala Prasad, J.) Nandkishore Sao v. Bikan Singh.

AIR 1922 P 557 : 3 Pat LT 570 : 65 IC 856 : 23 Cr LJ 200.

——Ss. 144 and 145—Procedure— Magistrate can rely on documentary evidence as to title.

A Magistrate can rely on the documentary evidence as to title to corroborate the oral evidence as to possession, even if the oral evidence

CRIMINAL P. C. (V of 1898), S. 144—12. Evidence were not quite satisfactory. (Kumaraswami Sastri, J.) Adaikran v. Nallakaruppan.

AIR 1922 Mad 188 (2) : 15 LW 62 : 65 IC 853 : 1922 MWN 12 : 23 Cr LJ 197.

13. Ex parte order—Sub-s. (2).

——In a dispute where rights of the parties are involved the Magistrate should in all fairness issue an 'ad interim' order restraining both parties and then after hearing them in Court make the order absolute against one party. (Ray C. J. and Narasimham, J.) Taturam Sahu v. State of Orissa.

AIR 1953 Orissa 96 : 17 Cut LT 48 : 1953 Cr LJ 731.

——S. 144 (2)— Ex parte order on police report and Collector's memorandum, when one of disputants is Collector himself and there is no inquiry in the matter—Ex parte order held not justified.

Where the dispute had been dragging on for months and months and there was no desperate urgency in the matter at all and no suggestion that heads were likely to be broken it is not a case which would come within Sub-S. (2) of S. 144, so as to justify an ex parte order specially upon the police report and the memorandum of the Collector of the District who himself is one of the disputants. (Harries C. J. and Bose, J.) Kalipada Das v. The State.

AIR 1951 Cal 207 : 51 Cr LJ 1575.

——S. 144 (2)— Order under— When should be passed.

The proper use to be made of S. 144 is to meet a temporary urgency or keep things in status quo and not to pass an order which has practically the effect of a mandatory injunction in favour of one of two opposing parties whereby he is able to deprive the other completely of his ordinary legal rights and remedies and that too finally for ali practical purposes. Before proceeding under S. 144 (2) the Magistrate must be satisfied that there are causes like danger to human life, or a disturbance of public tranquillity or a riot or an affray and which call for immediate prevention or speedy remedy. (B. Vasudevamurthy, J.) Siddegowda v. Kullegowda.

AIR 1951 Mys 17.

——S. 144 (2)—Ex parte order—Can be made only in case of emergency and when conditions do not admit of getting respondents served. (U Aung Tha Gyaw J.) Directors of the Sooratee Bara Bazar Co., Ltd. v. The Union of Burma.

1948 Bur LR 365.

——An ex parte order under S. 144 is ill advised. (Henderson, J.) Kalipada Roy v. Satish Chandra.

AIR 1942 Cal 66 (1) : 45 CWN 1090 : 14 RC 477 : 198 IC 559 : 43 Cr LJ 396.

——Ex parte order under S. 144—Right of aggrieved party.

Under the law, an ex parte order under S. 144 of the Criminal P. C., may be made in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed. But when such an order is made under Cl. 4 of S. 144, a party aggrieved might appear before the Magistrate who had made the order ex parte and ask him to rescind or alter the order and Cl. (5) of the section says that where such an application is received, the Magistrate shall afford to the applicant an early opportunity of appearing before him whether in person or by Pleader and showing cause against the order. (Mukerji and S. K. Ghose, JJ.) Abdul Majid v. Nripendra Nath.

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AIR 1934 Cal 393 : 6 RC 480 : 38 CWN 556 : 148 IC 773 : 35 Cr LJ 881.

——Ss. 144 (2), (4), 439—Action under S. 144 (2), when can be taken—Ex parte order under S. 144 (2)—Remedy of aggrieved party— Application to High Court—Propriety of.

Under S. 144 (2), Cr. P. C., the Magistrate may proceed only when immediate prevention or speedy remedy is desirable and he must be satisfied, among other things, that there is danger to human life or a disturbance of public tranquillity or a riot or an affray. Where an order under S. 144 (2) is passed ex parte the proper procedure is to apply under S. 144 (4) to the District Magistrate who has power to set aside the prohibitory order. Where the matter has to be disposed of expeditiously and the Magistrate adjourns the case, the High Court may be approached direct under S. 439, Cr. P. C. (Lort-Williams and N. C. Nair, JJ.) Surendra Nath v. Gostha Behari.

AIR 1934 Cal 139 : 37 CWN 962 : 6 RC 393 : 147 IC 1090 : 35 Cr LJ 541.

——When an ex parte order under S. 144 is called in question under cl. (4) of that section, the normal procedure should be for evidence to be recorded in the usual way by examination and cross-examination of witnesses in open Court. The proceeding being a judicial one it is desirable whenever possible to adopt the normal procedure. (Pandalai, J.) Satyanarayana Choudari v. Emperor.

AIR 1931 Mad 236 : 1930 MWN 841 : 33 LW 632 : 131 IC 449 : 1931 Cr C 332 : 60 MLJ 378 : 32 Cr LJ 744.

——Order passed under S. 144 without preliminary notice or inquiry is bad.

Where the opposite parties were not party to the proceedings under S. 145 started between the petitioners and one H, nor had any report been received from the police as to their possession of the two plots or as to a likelihood of a breach of the peace and the opposite party had merely said that their possession was being interfered with.

Held, that an order passed by the Magistrate under S. 144 was wrong especially when he passed the order without issuing any preliminary

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notice to the petitioners and without hearing them on the point; it was open to him either to direct that the opposite party should be made party to the proceedings then pending under S. 145 or a notice should have been issued on the petitioners to show cause. (Adami, J.) Dhanraj Bhagat v. Bharat Narain Singh.

AIR 1924 Pat 703 : 84 IC 324 : 2 Pat LR Cr 198 : 6 PLT 253 : 26 Cr LJ 260.

——Ex parte order not legal.

It is not proper for a Magistrate to pass an ex parte order under S. 144, Criminal Procedure Code, and when its propriety or legality is challenged to postpone the hearing of the matter from time to time until about the termination of the force of the order. Such matter ought to be disposed of quickly in order to avoid unnecessary encroaching on the civil rights and liberties of the subject. (Walmsley, and Suhrawardy, JJ.) Benawari Lal Ram v. Pronab Krisana Mujumdar.

AIR 1922 Cal 569 : 35 Cal LJ 397 : 71 IC 516 : 26 Cal WN 663 : 24 Cr LJ 164.

——S. 144 (2)— Scope of —Directing a party to open a channel in his own land—Whether legal.

An order of a Magistrate under S. 144 (2) of the Code directing a party to open up a channel in his own land is without jurisdiction. The Magistrate should not interfere under S. 144 (2) of the Code in a case which is likely to be settled by a Civil Court and where there is no immediate apprehension of a breach of peace. (Miller and Sadasiva Aiyar, JJ.) Subramania Aiyar v. Muthiambalam.

AIR 1914 Mad 239 : 23 IC 499 : 15 Cr LJ 291.

——Ex parte order—When justified— An ex parte order under S. 144 can be passed only in cases of emergency or when there is no time to serve notice. The order must disclose the existence of such contingency. (Munro and Abdur Rahim, JJ.) Vengataraya Goundan v. The Very Reverend N. Rondy.

8 MLT 180 : 7 Ind Cas 343 : 11 Cr LJ 449.

14. Nature of orders which can be passed.

——Ss. 144 and 4 (1) (m)—Nature of order.

Not only is the order of a Magistrate under S. 144 of the Code a judicial order but he also acts as a Court when he files a complaint under S. 188, Penal Code when there is a disobedience of that order. (Somasundaram, J.) Bondalapati Thatayya v. Gollapudi Basavayya.

AIR 1953 Mad 956 : 1953 Mad WN 485 : 1953 Cr LJ 1780.

——Scope— Landlord applying for order for tenant's eviction —No such order can be passed under section.

No landlord can pull down premises if by law he is not entitled to enter upon those premises to do anything to them. As long as the tenants are lawfully on the premises a landlord cannot enter. What must be done is legally to put an

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end to the tenancies and obtain a legal order for eviction. No such order can be made under S. 144. (Harries C. J. and Clough J.) Brindaban Shaw v. Narendra Nath Sarkar.

AIR 1948 Cal 192 : 49 Cr LJ 289.

——Order demolishing wall—Legality.

The words "to take certain order etc." must, no less than the previous expression "to abstain from a certain act", be interpreted in the light of the provisions of Sub-S. (6) which limit the operation of the order to a maximum of two months and by necessary implication exclude an order, such as an order demolishing a wall, which is irrevocable in its nature. (Dhavle, J.) Ram Narain v. Parmeshar Prasad.

AIR 1942 Pat 414 : 8 BR 722 : 23 PLT 644 : 15 RP 28 : 200 IC 776 : 43 Cr LJ 722.

——Proceedings under S. 144 — Magistrate making mandatory order directing party to do some act—Legality of—Disobedience of order— Conviction, if justifiable—Penal Code, S. 188.

In proceedings under S. 144, Criminal P. C., a Magistrate is only entitled to make a restrictive order preventing the opposite party from doing an act, but it does not enable him to make a mandatory order directing the opposite party to do some act. When such a mandatory order is passed, it is beyond the Magistrate's powers and the opposite party is under no obligation to obey it. Consequently, disobedience of such order is not punishable under S. 188, Penal Code. (Lort-Williams and M. C. Ghose, JJ.) Kusum Kumari v. Hem Nalini.

AIR 1933 Cal 724 : 6 RC 181 : 38 CWN 115 : 63 Cal 11 : 146 IC 169 : 34 Cr LJ 1192.

——Scope of — Order directing Village Munsif to be in possession.

A Magistrate acting under this section cannot direct a Village Munsif to take possession of the property in dispute but can only direct a party to the proceeding to do or abstain from doing something. (Seshagiri Iyer J.) Bhagantha Servai v. Valayee.

AIR 1917 Mad 629 : 3 LW 498 : 33 IC 830 : (1916) 2 MWN 88 : 17 Cr LJ 190.

——Scope of — Power to appoint a Receiver.

A Magistrate cannot appoint a Receiver in proceedings under S. 144 of the Code. (Sadasiva Iyer, J.) Palani Chetty v. Rathina Chetty.

AIR 1915 Mad 10 : 26 MLJ 208 : (1914) MWN 352 : 24 IC 597 : 15 Cr LJ 509.

——Power to order cultivating raiyats to refrain from reaping crop.

Notwithstanding the comprehensive language of S. 144, Cr. P. C., a Magistrate has no power to make an order under that section directing the petitioners who are cultivating raiyats to refrain from reaping the crops they have sown, unless they paid the rents claimed to be due from them to the Government or the Government farmer.

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CRIMINAL P. C. (V of 1898), S. 144 — 14. Nature of orders which can be passed

(Banerjee and Handley JJ.) Isab Mondal v. Emperor.

8 CWN 373 : 1 Cr LJ 248.

15. Nature of proceedings.

——Whether a proceeding under S. 144 can be called an 'inquiry' (Quaere). See also ibid, S. 517.

AIR 1952 Pat 316 : 1952 Cr LJ 1124.

A person who applies to a Magistrate for an order under S. 144, against another, institutes a criminal proceeding within the meaning of S. 211, I. P. C. A. Venkataramanujuiu Chetty v. Kanniah Chetty.

1933 MWN 1263.

——Proceedings under S. 144 being judicial the accused has a right to know what the information was on which the Magistrate acted in order to show that it was unfounded or insufficient. (Pandalai, J.) Sriramamurthi v. Emperor.

AIR 1931 Mad 242 : 1930 MWN 849 : 131 IC 649 : 33 LW 640 : 1931 Cr C 362 : 60 MLJ 370 : 32 Cr LJ 763.

——Proceedings under S. 144.

A Magistrate directed a notice to be issued under S. 144 and called upon the parties to show cause, if any. The parties showed cause, produced documents and argued upon it and the judgment was reserved. The Magistrate then examined some witnesses on the spot ex parte behind the back of the parties and without giving any notice to them of the local inspection passed an order based solely on the statements made by these witnesses without referring to documentary evidence and arguments submitted by the parties.

Held, that the Magistrate was bound to consider the evidence and arguments submitted under S. 144 (5) and the order based on the ex parte evidence is illegal as a proceeding under S. 144 is judicial proceeding. AIR 1927 Pat 301, Foll. (Jwala Prasad, J.) Gobind Ram v. Basanti Lal.

AIR 1929 Pat 46 : 114 IC 466 : 7 Pat 269 : 11 PLT 134 : 30 Cr LJ 302.

——Order of the Magistrate acting under S. 144 is not the order of a Court. No revision, therefore, lies against such order under S. 435, in spite of omission of Cl. 3 from the Code of 1898. AIR 1923 Mad 473, Foll.

Magistrates are not always Courts. S. 6 is not inconsistent with the idea that Magistrates may sometimes act in executive and administrative capacity and not as Courts. 39 Cal. 953 (PC), Dist. AIR 1924 Pat 703, Not Appro. (Ramesam, J.) Vedappan Servai v. Perianan Servai.

AIR 1928 Mad 1108 : 113 IC 279 : 12 AI Cr R 17 : 52 Mad 69 : 1 M Cr C 304 : 28 MLW 506 : 1928 MWN 779 : 55 MLJ 621 : 30 Cr LJ 119.

——Magistrate passing order under S. 144 is not a Court.

CRIMINAL P. C. (V of 1898), S. 144 — 15. Nature of proceedings

A Magistrate passing an order under S. 144, is not acting as a "Court" and sub-s. (7) of S. 195 is inapplicable to such a case. 6 M 208 (FB); 14 WR Cr 46, Foll. and 35 MLJ 454, Diss.

Obiter.—It is impossible that while securing orders under S. 144 from interference except by the successor of the Magistrate passing them or by some superior Magistrate, the Sessions Judge should have been given the power to render the order practically nugatory by declining to allow a prosecution for disobedience to it. (Alying and Ramesam, JJ.) Nataraja Pillai v. Rangaswami Pillai.

AIR 1923 Mad 473 : 72 IC 536 : 47 Mad 56 : 17 MLW 409 : 1923 MWN 240 : 32 MLT 214 : 44 MLJ 328 : 24 Cr LJ 424.

16. Order against general public—Sub-s. (3).

—A particular place referred to in S. 144 (3) may be a large area and all that is necessary is that the place should be so sufficiently defined that the public is reasonably notified of its extent. Hence an order of the Magistrate cannot be impugned solely because it is addressed to the general public of Nawapara thana. (Ray C. J. and Narasimham J.) Taturam Sahu v. State of Orissa.

AIR 1953 Orissa 96 : 17 Cut LT 48 : 1953 Cr LJ 731.

——(English Case) — "Organizing" procession — Meaning — Words and Phrases — Highways.

A public procession of a political character came into being spontaneously and without any prior arrangement. The appellant placed himself at the head. The appellant gave traffic signals and the procession obeyed him.

Held (Per Lord Goddard C. J. and Morris J., Finnemore J., Contra) that the appellant organized a procession (Meaning of expression 'organize' explained.) (Lord Goddard, C. J., Morris and Finnemore, JJ.) Flockhart v. Robertson.

1950-1 All ER 1091.

——S. 144 (3) — "Public generally" whether include members of public who are already in locality as residents or means only visitors from outside. AIR 1940 Oudh 241 : 41 Cr LJ 228, Overruled.

It was intended by sub-s. (3) to S. 144, Criminal P. C., to include members of the public who were already in the locality as residents, as well as visitors from outside. The proper interpretation of S. 144 (3) is that the order may be directed to a particular individual and that when, because of the number of particular individuals, it is impracticable for the Magistrate to issue notice to each one of them, he can issue a general order to the whole number of such particular individuals, here designated as "the public generally", and such order, in respect of each particular individual, will have the same effect as a separate order served upon him, provided, of course, that it has been so promulgated that it has come to

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his knowledge. The word "public" here does not only mean the corporate body pursuing its public avocation, but also means the whole number of particular individuals who in the circumstances cannot be particularly addressed. The order will have effect to control either the private or public actions of every such individual according to its tenor. The intention of the sub-section is to extend rather than to limit the scope of the orders so as to include therein even casual or frequent visitors from outside the limits of the particular locality within which the order is to have application. AIR 1940 Oudh 241 : 41 Cr LJ 228, Overruled. (Bennett and Madeley JJ.) Emperor v. Turab Khan.

AIR 1942 Oudh 39 : 1941 OWN (CC) 1087 : 1941 AWR (CC) 306 : 14 RO 189 : 17 Luck 52 : 196 IC 488 : 42 Cr LJ 884.

——S. 144 (3) — Interpretation — Act of residing in place, whether includes act of frequenting or visiting it — "Particular place", meaning of.

Under sub-s. (3) of S. 144, Criminal P. C., an order can be directed to a particular individual or to the general public when frequenting or visiting a particular place. The power of the Magistrate under this section is confined to the direction to a particular person to abstain from acts of a certain character or to the public generally to abstain from similar acts when frequenting a particular place. When because of the number of persons to be directed, it is impracticable for the Magistrate to issue notice to each individual, he can issue an order to the public generally, including besides residents, persons who may frequent or visit a particular place, and such order will be effective against each individual to whose knowledge it has come. The act of residing in a place includes the acts of frequenting or visiting it. Section 144 (3) contemplates prohibition of some act on the occasion the particular place referred to in the order is frequented or visited. A "particular place", referred to in sub-s. (3) may be a large area, and all that is necessary is that the place should be so sufficiently defined that the public is reasonably notified of its extent.

An order under S. 144 by the District Magistrate was as follows: "I hereby prohibit within the areas administered by the Cawnpore Municipality, the Cawnpore Cantonment Authority and the Juhi Notified Area Committee any person from printing or publishing in any way any article, leaflet or pamphlet, etc., likely to increase a communal tension or to excite intercommunal feeling and lead to a breach of the public peace":

Held, that though the areas referred to in the order might have been more clearly defined, the description was sufficiently detailed as to leave no doubt in the minds of the residents therein. Consequently, the order was perfectly valid under S. 144 (3) (Thom C. J., Ganganath and Braund

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JJ.) Emperor v. Afaq Hussain Jauhar.

AIR 1941 All 70 : (1940) ALJ 885 : 1940 AWR (CC) 642 : 13 RA 237 : ILR (1941) All 186 : 192 IC 466 : 42 Cr LJ 298 (FB).

——S. 144 (3) — Words, "or to public generally when frequenting or visiting a particular place", meaning of — "Frequenting", whether excludes member of public occupying house within defined area from category of those who frequent that area.

It would be putting a somewhat narrow construction on the word "frequenting" in S. 144 (3), Criminal P. C., to exclude a member of the public who occupies a house within a defined area from the category of those who frequent that area. The words "or to the public generally when frequenting or visiting a particular place" are wide enough to include all members of the public when within the defined area or at the defined place, whether he or she is present there 'frequently' e.g., as a resident—or merely casually or occasionally, e.g., as a "visitor".

An order under S. 144 must specify the place or area of its operation with such certainty that, in the minds of those to be affected by it, there can be no reasonable room for mistake. When the Act says that a "particular place" has to be defined, it means what it says, namely, that the public must be informed with certainty of the exact place in, at or within which the prescribed acts are forbidden to them. It must not be a matter of doubt, inference, calculation or inquiry. The order itself must define with particularity the place to which the prohibition extends. (Braund J.) Bhagwati Prasad v. Emperor.

AIR 1940 All 465 : (1940) ALJ 547 : 13 RA 230 : 1940 AWR (CC) 449 : ILR (1940) All 662 : 191 IC 360 : 42 Cr LJ 120.

——Expression "particular place" in S. 144 (3), includes district within Magistrate's jurisdiction — Frequenting of "particular place", whether prohibited.

The expression 'a particular place' is sufficiently wide to include the whole district over which a Magistrate may have jurisdiction.

But the public who can be affected by a prohibitory order of this nature must consist of those who ordinarily frequent or visit or have occasion to frequent or visit the district as a whole or some place within the district. The law does not contemplate the prohibition of the frequenting or visiting of the 'particular place' to which reference is made in sub-s. (3) but the prohibition of some act on an occasion on which such place is frequented or visited. It would not, therefore, be reasonable to suppose that it could have been the intention of the Legislature to empower a Magistrate by means of an order under S. 144, Criminal P. C., to restrain the movements of the members of the public before they had occasion to frequent

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or visit the district over which he had jurisdiction, by forbidding them to frequent or visit the district at all.

The plain meaning of sub-s. (3) read in the light of sub-s. (1) of S. 144, Cr. P. C., is that, in the circumstances set forth in sub-s. (1), a Magistrate may not only direct an individual to abstain from a certain act or acts but may also issue a similar direction to members of the public generally provided, in the latter case, the prohibition is limited to occasions on which the members of the public may frequent or visit a particular place. In other words, it would not be legal to issue a general prohibition to the public to abstain from a certain act but an order to the public generally to abstain from a certain act on the occasions when they happend to visit a particular place would be valid. The language is also sufficiently wide to cover residents in a particular locality but, in either case, it is, of course, essential that the place covered by the order and also the act prohibited should be described with reasonable precision, whether such place be an entire district or a particular street in a town and whatever the nature of the prohibited act may be. (Edgley, J.) Abu Husain v. Emperor.

A I R 1940 Cal 358 : 44 C W N 641 : 13 R O 157 : ILR (1940) 2 Cal 110 : 190 IC 228 : 41 Cr LJ 864.

——S. 144 (3)—Scope.

Sub-section (3) of S. 144, Cr. P. C., has nothing to do with the nature of the order, but is merely one of the four sub-sections which refer to the manner of promulgation and to the duration of an order under sub-s. (1).

Where an order is passed under S. 144, to the public generally, prohibiting them from doing certain acts " within the limits of Nawadah Union Committee", the order sufficiently describes a particular place within the meaning of S. 144 (3), when the limits of the Union Committee are clearly and specifically defined. (Meredith, J.) Madan Kishore, In the matter of.

AIR 1940 Pat 446 : 6 BR 425 : 12 RP 578 : 21 PLT 231 : 187 IC 135 : 41 Cr LJ 414.

——Order under S. 144 must specify "particular place"—Words "particular place" mean particular place visited by public.

The scope of an order passed under S. 144 against the public generally is narrower than that passed against an individual and served personally on him. Although the word "public" has not been used with the expression "particular place" still the law intends not only that the particular place should be specified but also that it should be a place which is frequented or visited by the public. Therefore an order which was addressed to the general public and was to the effect that nobody shall sacrifice a cow within a radius of a mile from certain villages cannot be

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said to be in accordance with law. AIR 1931 Mad 242, Rel on. (Ziaul Hasan J.) Babu v. Emperor.

AIR 1940 Oudh 241 : 15 Luck 344 : 41 Cr LJ 228. (Overruled in AIR 1942 Oudh 39 : 42 Cr LJ 884.)

——S. 144 (1), (2) and (3) — Order under first two clauses of S. 144 cannot be issued to general public — Order under Cl. (3) when can be issued to general public.

It is clear from the terms of sub-cl. (3) of S. 144, that no order under S. 144, can be issued to the public generally except when "frequenting or visiting a particular place" and any order which ignores this limitation must be held to be bad in law.

The first two clauses of S. 144, Criminal P. C., do not invest the Magistrate with any power to issue an order to the general public. They are confined to the case of an individual person or persons to whom a notice may be issued directing them to refrain from a certain act or to take certain order with certain property in their possession or management. (Mulla, J.) Sat Narain v. Emperor.

AIR 1939 All 746 : 1939 AWR (CC) 711 : (1939) ALJ 1011 : 12 RA 307 : ILR (1939) All 934 : 185 IC 172 : 41 Cr LJ 121.

——S. 144 (1), (3) — Sub-s. (3) has nothing to do with nature of order — District Magistrate, if can promulgate order throughout district.

The District Magistrate has jurisdiction throughout his district and is empowered to direct any person to abstain from a certain act if he considers that such direction is likely to operate in any of the ways mentioned in sub-s. (1) of S. 144, Criminal P. C. Sub-section (3) of S. 144 has nothing to do with the nature of the order but is one of the four sub-sections which refer to the manner of promulgation and to the duration of an order under sub-s. (1). When, because of the number of persons to be directed, it is impracticable for the Magistrate to issue notice to each individual, he can issue an order to the public generally, including, besides residents, persons who may frequent or visit a particular place and such order will be effective against each individual to whose knowledge it has come. (Coldstream, J.) Abdul Karim v. Emperor.

AIR 1937 Lah 80 : 17 Lah 515 : 38 PLR 964 : 9 RL 474 : 167 IC 284 : 38 Cr LJ 354 (2).

——Operation of orders under S. 144 should be kept within the narrowest possible limits — Locality to which the orders are applied should be clearly defined — 'Particular place', meaning of.

It is necessary that the operation of orders under S. 144, Criminal P. C., should be kept within the narrowest possible limits, and that the place or locality to which they are applied should be so clearly defined as to enable the public to know at once what the prohibited area is and to obviate the possibility of the people disobeying the order through ignorance of the place to which it is applied. The words "particular place"

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should not be confined to a restricted area but should be construed as meaning a well-defined area regarding the boundaries of which the public can be in no doubt.

Where an order under S. 144 was passed forbidding "public meetings or public assemblies of more than five persons within the small town and the revenue estate of Qadian and any revenue estate immediately contiguous with them during the next two months except meetings for purposes of religion held in recognised places of worship":

Held, that the order was too vague to be effective in so far as it related to the revenue estates contiguous to Qadian and that the expression "the revenue estate of Qadian" was also vague as ordinarily, the boundaries of revenue estates are not so clearly marked as to be apparent to the general public and hence the order, as far as it related to the revenue estate of Qadian and the revenue estates contiguous thereto, was too vague to be effective. (Currie, J.) Qamarud Din v. Emperor.

AIR 1935 Lah 679 : 7 RL 913 : 37 PLR 515 : 156 IC 526 : 36 Cr LJ 951.

——An order directed to the public when frequenting public or private streets in a particular city is sufficiently definite as to place to comply with the requirements of S. 144. (Beaumont C. J. and Sen J.) Sorab Shavaksha v. Emperor.

AIR 1935 Bom 33 : 36 Bom LR 1129 : 7 RB 359 : 154 IC 637 : 36 Cr LJ 547.

——Order under S. 144 — Locality to which order is applied should be clearly defined — S. 144(3) — 'Particular place' in S. 144(3), meaning of.

The expression "particular place" in sub-s. (3) of S. 144, Criminal P. C., implies that the place to which the restriction applies should be sufficiently particularised, i.e., specified in the order, so that the public might feel no vagueness or uncertainty about it. It has not so much to do with the area of the place as to its description.

An order under S. 144, Criminal P. C., especially when it is directed against the public generally, involves a considerable infringement upon the rights of the public and very often a considerable interference with the legitimate activities of the public. It is necessary, therefore, that the operation of such orders should be kept within the narrowest possible limits, and that the place or locality to which they are applied should be so clearly defined as to enable the public to know at once what the prohibited area is and to obviate the possibility of people disobeying the order through ignorance of the place to which it is applied. (Wadia and Divatia, JJ.) Vasant B. Khale v. Emperor.

AIR 1934 Bom 375 : 36 Bom LR 733 : 7 RB 161 : 59 Bom 27 : 152 IC 701 : 36 Cr LJ 130.

——Determination of question as regards limits within which order is to be operative — Necessity

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of — Order directing public in general to abstain from attending a hat — Propriety of.

Although it is open to a Magistrate to make the order in such terms as holding a hat at or near a place in order that it may not be possible for the party against whom such an order is made to evade the terms of the order by removing the hat the holding of which is sought to be prevented, to a short distance yet at the same time before a notice containing such terms is issued, there must be a proper determination of the question as regards the limits within which the order is to be operative.

An order under S. 144 of the Code, in so far as it directs the public in general to abstain from attending the hat is not warranted by the terms of Cl. (3) of S. 144 because such an order can only be against the public in general within the limitation imposed by that clause, namely, that it can be made against them only when frequenting or visiting a particular place. (Mukerji and S. K. Ghose, JJ.) Abdul Majid v. Nripendra Nath.

AIR 1934 Cal 393 : 6 RC 480 : 38 CWN 556 : 148 IC 773 : 35 Cr LJ 881.

——Ss. 144, 145 — Order prohibiting people joining 'Morning Rounds' — Objection by public — Duty of Magistrate to record evidence under S. 144, whether administrative or judicial.

An order by a District Magistrate under S. 144, prohibiting the holding of Prabhat Pheris (Morning Rounds) by the public within a local area is a judicial and not an administrative order.

In such a case, the Magistrate must keep an open mind and record at least a reasonable portion of the evidence essential for the judicial determination of the objections raised by the members of the public under S. 144 (5).

An order under S. 144, Criminal P. C., addressed to the public generally must be limited under sub-s. (3) to the public when frequenting or visiting a particular place. (Madgavkar and Murphy JJ.) Belvi, D. V. v. Emperor.

AIR 1931 Bom 325 : 33 Bom LR 673 : Ind Rul (1931) Bom 456 : 134 IC 344 : 32 Cr LJ 1144.

——No order can be passed against the public without the limitation as to place. The place must be open to the public as such. The public cannot be prohibited from putting up flags in private houses and in such a case the house owners cannot be called members of the public for purposes of the section. (Pandalai, J.) Sriramamurthi v. Emperor.

AIR 1931 Mad 242 : 1930 MWN 849 : 131 IC 649 : 33 LW 640 : 1931 Cr C 362 : 60 MLJ 370 : 32 Cr LJ 763.

——An order can only be issued to the public generally when frequenting or visiting a particular place. An order which directs the public in general to abstain from attending Hat is bad since it is not until the public attends the Hat that the order can be binding on them. (Newbould

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and Mukerji, JJ.) Ashutosh Roy v. Harris Chandra Chattopadhaya.

AIR 1925 Cal 625 : 86 IC 810 : 29 CWN 411 : 26 Cr LJ 874.

——S. 144 (3) — General order — Stopping new Bazar to be held on the same day — When legal.

Although a general order under S. 144 of the Cr. P. C. (V of 1898) restraining the holding of a hat or market is not a permissible order, the prohibition in which related only to the holding of the market on the same days as the old market is held with the object of preventing a breach of the peace is legal. Bycuntram Shaha Roy and others v. Meajan (18 WR Cr 47) and Nagendra Nath v. Biswas Rakhal Das Sinha (22 CWN 141), followed.

Disobedience of such an order is punishable under S. 188, I. P. C., prosecution for which might start either by sanction under S. 195 or S. 476, Cr. P. C. Projaput v. Emperor. 14 CWN 234, followed. (Jwala Prasad, J.) Parameswar Rai v. Emperor.

AIR 1922 Pat 84 : 3 Pat LT 268 : 67 IC 205 : 1922 Pat 204 : 4 UPLR (Pat) 34 : 23 Cr LJ 381.

——General order — Cow sacrifice — Legality.

Under S. 144, Cr. P. C., the District Magistrate has power to issue an order to the public generally when under particular circumstances they cannot be individually addressed. Sub-section (3) is intended to extend rather than limit the scope of frequent visitors to the locality. The District Magistrate can validly issue a general order that no person should sacrifice or cause to be sacrificed any cow or bullock within a specified boundary and period. (Kanhaiya Lal and Kendall A. J. Cs.) Abdul Gafur v. Emperor.

AIR 1915 Oudh 188 : 27 IC 670 : 18 OC 70 : 16 Cr LJ 190.

——General order—Order to public at large—Jurisdiction.

An order under S. 144, is without jurisdiction if it is not confined to a particular individual or to the public generally when frequenting or visiting a particular place. (Heaton and Shaw, JJ.) Bhagu Bhai Dwarka Das v. Emperor.

AIR 1914 Bom 198 : 16 Bom LR 684 : 27 IC 146 : 16 Cr LJ 98.

17. Order to abstain.

——Mandatory order, if can be passed under S. 144.

Section 144, Cr. P. C., clearly empowers a Magistrate to pass a mandatory order on persons in possession of property if it is necessary in the opinion of the Magistrate that such action should be taken for the purposes enumerated in the section. (Agarwala, J.) Lachmi Narayan v. Nandkishore Singh.

AIR 1940 Pat 57 : 6 BR 79 : 20 PLT 850 : 12 RP 276 : 184 IC 723 : 41 Cr LJ 98.

——Magistrate, if can pass mandatory order — Scope of section — Person taking possession of

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land in dispute and erecting fence round it — If can be ordered to remove fence.

No doubt S. 144, Criminal P. C., gives a Magistrate the power to pass an order to prevent an immediate breach of peace but that section, by its terms does not authorize him to pass any mandatory order. All that the Magistrate can do under that section is to direct any person to abstain from a certain act or to take certain order with certain property in his possession or under his management. In other words, the section empowers a Magistrate to pass a restrictive order.

Hence the Magistrate cannot under S. 144, direct the person who has taken possession of the disputed land and erected fence round it to remove the fence. (Chatterji J.) Bimala Kanta v. Sanat Kumar Ghose.

AIR 1938 Pat 610 : 19 PLT 620 : 5 BR 169 : 11 RP 311 : 178 IC 945 : 40 Cr LJ 144.

——Order under S. 144 — Legality of — Disobedience of such order — Whether offence under S. 188, Penal Code.

The words "to abstain from a certain act" in S. 144 of the Criminal P. C., do not empower Magistrate to make a positive order requiring a person to do a particular thing. This order being without jurisdiction, the subsequent order summoning the person under S. 188, I. P. C., for disobeying the order under S. 144, Criminal P. C., is without jurisdiction. (Lort-Williams and Jack, JJ.) Lokendra Lal Pal Choudhury v. Emperor.

164 IC 434 : 61 CLJ 579 : 39 CWN 1053 : 9 RC 207 : 37 Cr LJ 936.

——Ordering abstention from residing at a particular place — If legal.

The Magistrate has no jurisdiction to pass an order on any person to abstain from residing in a place, where he is at the time the order is passed. (Das, J.) Thakin Ba Thoung v. Emperor.

AIR 1934 Rang 124 : 12 Rang 283 : 7 R Rang 57 : 151 IC 211 : 35 Cr LJ 1300.

——Positive orders requiring people to do particular things, legality of.

Section 144, Criminal P. C., is not intended to empower Magistrate to make positive orders requiring people to do particular things. A Magistrate cannot, therefore, make an order under S. 144, which in effect is not a direction to abstain from doing anything but a direction upon a person to remove himself from the district and to do so by the next available train. (Rankin C. J. and Graham, J.) Sasmal B. N. v. Emperor.

AIR 1931 Cal 263 : 53 CLJ 175 : Ind Rul (1931) Cal 392 : 58 Cal 1037 : 130 IC 872 : 32 Cr LJ 592.

——The interpretation of the Sessions Judge of the order directing a party not to obstruct the water by bandh is an order directing the removal of a bandh already erected is wrong.

A small river flowed by the east side of two villages K and S, whose lands were irrigated by

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the river. In August 1927 the people of K and certain adjoining villages raised a bandh in the bed of the river in village K, whereupon on 2nd September the tenants of S filed a petition before the Sub-Divisional Officer denying the right of the people of K to erect a bandh and alleged that the bandh caused great damage to the crops of S and asked the Court to take action under S. 144 against the people of K directing them to remove the bandh. On 8th September the Magistrate passed the following order: "The report shows that the villagers of K have erected a new bandh at point A of this map. Issue notice S. 144, Cr. P. C., restraining the second party from obstructing the flow of water into the canal by erecting a bandh at point A.... Send a copy of the order to the police who will see that there is no breach of the peace." The people of S as also the Inspector of Police and the Sessions Judge construed the order to mean that the bandh was to be removed.

Held, that there was nothing in that order to justify the assumption that the Magistrate had given any direction to the Sub-Inspector to remove the bandh erected by the people of K. It was beyond the jurisdiction of the Magistrate to pass an order like this under S. 144. All that it purported to do was to restrain the people of K from obstructing the flow of water into the canal by erecting a bandh. This obviously could not apply to a bandh which had been admittedly erected before this order was passed, and that it could not be held that the people of K were acting in defiance of the order of the Magistrate. (Courtney Terrell, C. J. and Fazl Ali, J.) Tilak Kohar v. Emperor.

AIR 1929 Pat 523 : IR 1930 Pat 585 : 126 IC 153 : 1929 Cr C 283 : 31 Cr LJ 967.

——Scope of—Trustee restrained from interfering with the conduct of servants.

Where a trustee of a temple was directed by an order under S. 144 to abstain from interfering in any way with the conduct of the adyapakam service. Held, that the order was definite as it sufficiently defined the acts from which the trustee was required to abstain, and the acts contemplated were certain within the meaning of the section. 24 Mad 45, Appl; 16 Cal 80, Doubted. (Bakewell, J.) In re Srinivasa Thatha Chariar.

AIR 1918 Mad 18 : 47 IC 657 : 19 Cr LJ 933.

——Scope of — Prohibitory order against Melvaram exercising his rights — Validity.

An order by which a Melvaramdar is prohibited from exercising certain acts as Melvaramdar is valid under S. 144. But where such order interferes with the rights of tenants, it would not affect them unless the order is specific on the point and addressed to them. The words "any person to abstain from certain acts" in Madras so as to enlarge the jurisdiction of the Magistrate.

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(Sadasiva Aiyar, J.) In re Meyyayaru Ammal.

AIR 1914 Mad 150 : (1914) MWN 169 : 22 IC 721 : 28 MLJ 132 : 15 Cr LJ 145.

——Order to prevent pecuniary loss to a party.

An order under the section cannot be passed merely to prevent pecuniary loss to the opposite party. The party aggrieved should seek his remedy in the Civil Court. (Brett and Ryves, JJ.) Ram Autar Sahu v. Kishnuput Ram.

4 Ind Cas 577 : 13 CWN 188 : 5 MLT 92 : 11 Cr LJ 11.

18. Power to override private rights.

(a) Processions
(b) Rival hats.
(c) Public meetings.

18. Power to override private rights.

——Power of Magistrate to override private rights.

Where the Magistrate came to the conclusion that one of the parties has established its rights, his clear duty was to enable the party having the right to exercise the same and, if need be, to restrain the other party by binding them over to keep peace by exercising powers vested in the Magistrate under the Code. The Magistrate should have exhausted other powers vested in him under the Code before resorting to S. 144. (Balakrishnaiya, J.) Biligiri Naika v. Sidda Setty.

AIR 1953 Mys 107 : 31 Mys LJ 153 : 1953 Cr LJ 1271.

——Power of Magistrate to override private rights —Order prohibiting one section of fisher folk from using modern type of nets for fishing cannot be sustained.

It is the inherent right of every citizen to strive to achieve the greatest success in the pursuit of his lawful avocations by resorting to the most efficient and up-to-date methods available. Courts of law are bound to protect all lawful activities in the exercise of such a legal right. Any threatened opposition by the members of the opposite party, to the exercise of such a right, cannot justify an action being taken by the Magistrate under Section 142 (corresponding to S. 144, Indian Criminal P. C.). If a breach of the peace is anticipated as a result of the clash between these two forces, the proper course to be adopted would be to take action against the potential law-breakers, and not against the peaceful citizens engaged in their lawful activities and whom the law-breakers threaten to molest.

Section 142 of Travancore-Criminal P. C., (corresponding to S. 144, Indian Criminal P. C.), is primarily intended to meet an emergent situation. Any order passed to meet an emergent situation cannot be allowed to be in force for any indefinitely long period. On the other hand it is the duty of the Magistrate to make a prompt enquiry into the legality or otherwise of the act prohibited and also into the causes which may lead to

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a breach of the peace as a result of that act. If as a result of such enquiry it is found that the act is a lawful one and is within the legal rights of one party and that a breach of the peace would occur only as the result of the interference by the other party with the lawful exercise of such rights, the Magistrate is bound to rescind the prohibitory order and to render every protection needed for the lawful exercise of the said legal rights by the party entitled to do so. The restraint, if any, can only be against the other party threatening a breach of the peace by illegally interfering with the exercise of such legal rights.

Where the District Magistrate passes an order under S. 142, prohibiting one section of the fisher folk from using the modern type of nets for fishing in the Coastal waters, the order cannot be sustained. Even if the emergency of the situation had necessitated the passing of such an order in the first instance, the Magistrate should rescind that order when the petitioners against whom that order had been issued appear before him and draw his attention to the fact that they were only exercising their lawful right in a peaceful manner and that therefore action, if any, has to be taken against the others who threatened to commit a breach of the peace by resorting to force in opposing the exercise of such lawful right. (Sankaran, J.) Abdul Kadir Lebba Abdul Rahiman v. State.

AIR 1952 Trav.Co. 251 : 1952 Ker LT 16 : 1952 Cr LJ 1121.

——Power of Magistrate to interfere with private rights — Obiter dicta contained in civil Court's judgment should no doubt be respected — But paramount consideration should be that of law and order.

In passing orders under S. 144 the authorities will no doubt pay due regard to the observations contained in civil Court's judgment with regard to private rights but in doing so there can be no question that the paramount consideration should be that of maintenance of law and order. Principles laid down in numerous decisions with regard to enforcement of civil Court decrees by authorities while exercising powers under S. 144 applies a fortiori with regard to obiter dicta: 47 All. 151 (P C); 51 Mad. 1000 (FB) and AIR 1931 All. 341, Ref. (Yahya Ali, J.) Murugappa Mudaliar v. Kappuswami Mudaliar.

AIR 1949 Mad 212 : 61 MLW 797 : 1948-2 MLJ 458 : 1948 MWN 685 : 1948 AWR (Sup) 155 : 50 Cr LJ 235.

——Ss. 144, 145—Exercise of powers under S. 144—Duty of Magistrate.

It is true that S. 144, Criminal P. C., gives wide powers to the Magistrate and that imminent danger to the public peace justifies the subordination of private interests. At the same time care should be taken to see that use of this section is not invoked by one party to a dispute in order

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to obtain material advantage over the other. (Davis J. C. and Weston, J.) Viru Kamu v. Dewandas Jhamandas.

AIR 1940 Sind 158 : 13 RS 110 : ILR (1940) Kar 508 : 190 IC 618 : 41 Cr LJ 952.

——Action should be directed against wrong-doers than wronged.

Obiter.—Even in the case of an order in an emergency under S. 144, Criminal P. C., the Magistrate's action should be directed rather against the wrong-doers than the wronged though the nature of the emergency may make it necessary for a time, in the public interest, to interfere with the lawful exercise of private rights. But, in any case, the authority of Magistrates should be exercised in defence of rights rather than in their suppression, in repression of illegal rather than in interference with lawful acts. (Davis, J. C. and Weston, J.) Jasoda Lekhraj v. Emperor.

AIR 1939 Sind 167 : 12 RS 31 : ILR (1939) Kar 662 : 182 IC 698 : 40 Cr LJ 703.

——Powers conferred on Magistrate under S. 144, scope of—Duty of Magistrates.

Section 144, Cr. P. C., deals with urgent cases of nuisance and apprehended danger of the breach of the public peace. Where there is danger of the breach of the public peace apprehended, and in consequence thereof, an immediate prevention is necessary, Magistrate specially empowered in that behalf may issue instructions to individuals or the public in general to abstain from a certain act. The power thus conferred on the Magistrates is an extraordinary power. It enables them to suspend the lawful rights of the public if they think such a suspension will be in the interests of public peace and safety. The Magistrates, however, should bear in mind that every citizen has a right to ventilate his grievance either in public or in private and ask for redress. This right should not be curtailed so long as it is exercised in a lawful manner. It is an illegal assumption of power to issue an order under S. 144 on a pretended apprehension of the danger of the breach of the public peace. (Ba U J.) Thakin Aung Bala v. District Magistrate, Rangoon.

AIR 1939 Rang 181 : 11 R Rang 516 : 1939 Rang LR 294 : 182 IC 23 : 40 Cr LJ 645.

——Ss. 144, 147—Property in which general public has no interest in possession of owner—Magistrate, if can pass order allowing other persons to enter upon property and perform ceremonies against owner's wish merely because they are prepared to use force.

Where the general public has no interest at all in a certain property in possession of its owners, a Magistrate cannot properly pass any order allowing other people to enter upon such property and perform ceremonies upon it against the owner's wish. In any event, if the Magistrate feels that he ought to do so in the interests of the public

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peace, it is at least necessary that he should hold some enquiry under S. 147, Cr. P. C., in order to discover for himself pending any decision by a Civil Court whether other persons have any right to the user of the land in the manner in which they desire to use it. The owners cannot be compelled to allow their property to be used in a way in which they do not wish that it should be used unless it is established that others have a right of user it cannot be the intention of the law that a Magistrate should compel the owner of property to submit to trespass upon it merely because the trespasser is prepared to use force. (Allsop, J.) Abdul Majeed v. Emperor.

AIR 1939 All 182 : 11 RA 470 : 1938 AWR (HC) 851 : 180 IC 499 : 40 Cr LJ 383.

——It is the duty of Criminal Court to respect, maintain and preserve the possession given by the Civil Court. It is the duty of the Criminal Court to give all the help provided by law to the man who has been put in possession of a property by the Civil Court. (Mohamad Noor and Luby, JJ.) Mahabir Singh v. Emperor.

AIR 1934 Pat 565 : 7 RP 208 : 1 BR 65 : 15 PLT 819 : 152 IC 591 : 36 Cr LJ 146.

——Duty of Magistrate — Protection of lawful rights.

Where a Magistrate passed three ex parte orders in the space of six months which, in effect, banned all processions along all the streets of a town and at the same time refused to enquire into the rights set up by the parties:

Held, that when the Magistrate acted under S. 144, Criminal P. C., it was his duty to give an early opportunity to any person or persons aggrieved by that order to show cause against it in order to see if that order has to be rescinded or altered, and that he had, for that purpose, to consider whether the claims advanced by one or other of the parties are within or in excess of their legal and natural rights and whether any alterations or restrictions to the order already passed are reasonably necessary in order to obviate undue hardship to one or the other of the parties and to see that protection is given to the persons who act within the bounds of their legal and natural rights without being molested by the breakers of law, having at the same time due regard to the paramount necessity of preserving public tranquillity.

Although a Magistrate acting under S. 144 is not to usurp the functions of a Civil Court, he has to take into consideration the nature of the claims set up by the parties to see if it is possible to afford protection to those who seek only the lawful exercise of any legal and natural rights. (Sundaram Chetty, J.) Ramnad Zamin Devasthanam Tahsildar v. Ambalam.

AIR 1932 Mad 294 : Ind Rul (1932) Mad 566 : (1932) MWN 144 : 62 MLJ 392 : 35 MLW 366 : 138 IC 354 : 33 Cr LJ 605.

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——The preservation of the public peace is a function of the Government and in the performance of that function, it may be necessary for them to override temporarily private rights. Where there is a conflict between the public interest and a private right, the former must prevail. 3 Mad. 203, Rel. on. (Coutts-Trotter, C. J., Devadoss, Beasley, Waller and Jackson, JJ.) Viswanadha Rao v. Emperor.

AIR 1928 Mad 1049 : 11 AI Cr R 385 : 112 IC 863 : 51 Mad 1006 : 1 M Cr C 50 : 1928 MWN 615 : 28 MLW 406 : 55 MLJ 442 : 30 Cr LJ 31 (FB).

——Justification.

Though a person has an absolute right to use his property as he pleases, yet, if the mode of enjoyment of his property, innocent and lawful though it might be, results or tends to result, in a series of acts which are likely to lead to a breach of the peace, an order under S. 144, restraining the person temporarily from enjoying the property in that way is amply justified. 10 BLR 434 (F.B.), Rel. on. 11 CWN 79, Dist. (Chotzner and Gregory, JJ.) Ram Gopal v. Narayan Das.

AIR 1928 Cal 446 : 108 IC 590 : 32 CWN 613 : 55 Cal 1077 : 47 CLJ 452 : 10 AI Cr R 82 : 29 Cr LJ 423.

——Restraining a right to take a procession, obtained by a decree is not valid.

Where Hindus of a certain place, in accordance with a decree obtained in their favour, applied for leave to take procession along the streets and the Magistrate passed an order under S. 144, forbidding the Hindus to conduct that procession, holding that the likelihood of rioting and bloodshed was too great to allow them to exercise their lawful rights.

Held, that this was a confession of importance on the part of the authorities. The District Magistrate is the person who is to look after the peace of his district and naturally in case of sudden emergency it may be necessary to restrict a person from exercising a perfectly lawful right. But it should not be necessary to prevent that person not only in a particular occasion in the near future but for all time from exercising that right because it would be too much trouble to render him adequate protection against persons who intend to disobey the law.

Orders under S. 144 are not intended to be used as a means of depriving the citizens of lawful rights which have been declared by competent Courts. (Phillips, J.) Sivapuram Venkata Subbaya v. Muhammad Falauddin Khaji.

AIR 1927 Mad 611 : 101 IC 893 : 8 AI Cr R 146 : 52 MLJ 651 : 28 Cr LJ 509.

——It is the duty of the executive to uphold the civil rights declared by Civil Courts by all means available before resorting to S. 144. (Wallace,

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J.) Guddam Venkatasubba Reddi v. King-Emperor.

AIR 1927 Mad 368 : 100 IC 709 : 25 MLW 375 : 7 AI Cr R 53 : 52 MLJ 298 : 28 Cr LJ 325

——Court must make enquiry in the circumstances likely to cause breach of peace.

Section 144 is not intended to restrict the liberty of an individual if there is no apprehension of a breach of the peace on account of any act to be done by him. Its object is to enable a Magistrate in cases of emergency to make an immediate order for the purpose of preventing an imminent breach of the peace; but it is not intended to relieve him of the duty of making a proper enquiry into the circumstance which make it likely that such breach of the peace will occur. If it is found that a man is doing that which he is legally entitled to do and that his neighbour chooses to take offence and threatened to create a disturbance in consequence, it is clear that the duty of the Magistrate is not to continue to deprive the first of the exercise of his legal right but to restrain the second from illegally interfering with that exercise of legal right. 5 Cal 132, Foll. (Kulwant Sahay, J.) R. E. Blong v. King-Emperor.

AIR 1924 Pat 767 : 82 IC 42 : 1924 PHCC 262 : 6 PLT 130 : 3 Pat LR Cr 41 : 25 Cr LJ 1178.

——Procedure—Legality of order.

If the effect of the order under S. 144 is that no Mahomedan would be allowed to say his prayers in the mosque, such an order is not justified under S. 144 Cr. P. C. The proper course that the Magistrate ought to follow is to find out which party is wrong and restrain that party from committing any act which may lead to a breach of the peace. (Walmsley and Suhrawardy, JJ.) Haji Md. Ismail v. Barkat Ali.

AIR 1922 Cal 483 : 26 Cal WN 904 : 71 IC 506 : 24 Cr LJ 154.

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(a) Processions. See also Highway.

——Adi-Dravidas, rights of, to take out procession through locality of caste Hindus — Order under S. 144, when can be made.

There can be no doubt that the Adi-Dravidas have a civil right to take a procession along all public streets, just as any other persons may have; whereas the caste residents have no right at all to object. Ordinarily those responsible for law and order should see that persons exercising their rights have the support of the Police and the Magistracy; but cases do, of course, arise where, in the interests of public peace, persons should be prevented from exercising their rights. If the Adi-Dravidas, for example, are anxious to conduct a procession, not to honour Sri Thirvulluvar but in order to irritate and annoy the caste residents of those streets, then the Magistrate would be justified in placing some restraint upon their procession; but unless the

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Magistrate is satisfied that the Adi-Dravidas had no bona fide desire to do honour to the saint, he should not pass an order under S. 144, Criminal P. C. unless he is quite satisfied that there is no other means within his power of preventing a breach of the peace. The fact that the Adi-Dravidas have been exercising restricted rights in the past can be rightly taken into account; but it is not in itself a sufficient ground for refusing them protection in the exercise of their full rights. (Horwill, J.) Shanmuga Pandaram v. Ponnuswami Iyer.

AIR 1938 Mad 714 : 47 MLW 741 : 1938 MWN 606 : (1938) 2 MLJ 160 : 11 RM 326 : 177 IC 436 : 39 Cr LJ 886.

——Right to celebrate Ram Lila and take out procession for the first time—Another section of people who have no manner of right or interest objecting—Orders under S. 144—Propriety of.

Ordinarily a person desiring to do what he is lawfully entitled to do should have the support of those responsible for law and order. Orders under S. 144, Criminal P. C., are to be directed not against those who desire to do what the law permits them to do but against those who attempt to prevent the exercise of a legal right. Persons, of whatever sect, are entitled to conduct religious processions through public streets, so that they do not interfere with the manner and use of such street by the public and subject to such directions as a Magistrate may lawfully give to prevent obstructions of the throughfares or breaches of the public peace. The right is not one which is dependent for its enforcement on the previous exercise of it. The Magistrate should not take action under S. 144, merely because some Muhammadans who have no manner of interest or right object to the Ram Lila procession taken out by some section of the Hindus even if the Hindus celebrate the festival only for the first time. (Niamatullah, J.) Jafar Husain v. Pearey Lal.

AIR 1935 All 575 : (1935) ALJ 821 : 1935 AWR (H C) 674 : 8 RA 5 : 156 IC 595 : 36 Cr LJ 955.

——Religious or social processions—Rights—Public Highway—Nuisance.

Members of Hindu community have a right to take out religious and social processions accompanied by music along public roads even while passing mosques, subject to any orders or direction issued by the Magistrate or the Police for preventing breaches of the public peace or obstruction of the thoroughfares or for other matters mentioned in S. 144, Criminal P. C., or under other statutory provisions or for regulation of traffic, provided that the exercise of such right does not amount to a nuisance recognised by law. (Sulaiman and Young, JJ.) Mahammad Jalil Khan v. Ram Nath Katua.

AIR 1931 All 341 : Ind Rul (1931) All 344 : (1931) ALJ 354 : 53 All 484 : 131 IC 40.

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(b) Rival hats.

——Starting of rival business in close proximity to previously established one—Order under S. 144, if can be issued.

A Magistrate, as an emergency measure has power to stop, by an order under S. 144, Criminal P. C., the holding of a hat, or the exercise of his rights by a man on his own land. But a man, who holds a hat on his own land, is perfectly entitled to do so and that by itself is not a wrongful act. Competition in trade, unless illegal methods are adopted, is not a wrongful act. When a rival business is started in close proximity to a previously established business, the person interested in the latter is bound to object to the former and some sort of strained feeling is inevitable. This by itself is no ground for restraining the newcomer from carrying his trade unless he is doing or is likely to do any wrongful act which may lead to a breach of the peace. In such a case, the best course is to prohibit the doing of the wrongful act or, if necessary, to bind down the wrong doer under S. 107, Criminal P. C. But an order more or less of a permanent nature is not justified under S. 144, Criminal P. C., which is meant for speedy remedy. (Mohammad Noor, J.) Rama Barik v. Emperor.

AIR 1940 Pat 185 : 6 BR 480 : 12 RP 637 : 5 Cut LT 54 : 187 IC 511 : 41 Cr LJ 463.

——Competition in trade—When becomes a wrongful act.

Competition in trade, unless illegal methods are adopted, is not a wrongful act. When a rival business is started in close proximity of a previously established business, the person interested in the latter is bound to object to the former and some sort of strained feeling is inevitable. But that by itself will be no ground for restraining a newcomer from carrying his trade unless he is doing or is likely to do any wrongful act and likely to lead to a breach of the peace. (Mohammad Noor, J.) Saligram Singh v. Baijnath Singh.

AIR 1934 Pat 104 : 14 PLT 740 : 6 RP 712 : 150 IC 118 : 35 Cr LJ 1057.

——General order—Essential elements.

There is a clear distinction between interfering with the rights of private proprietors with whatever ulterior motive they may do acts which they have a right to do and the perpetration of wrongful acts by such proprietors. The law as regards preservation of public peace is based upon an apprehension that either certain person or persons are likely to commit breach of the peace by their own acts or that they are likely to do wrongful acts which may occasion other people to commit breach of the peace. The criminal Court assumes jurisdiction to interfere with this lawful exercise of a person's right of ownership when such exercise in its ulterior consequences being directed

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primarily against the lawful exercise of another person's right of ownership is likely to cause a breach of the peace. An order prohibiting a party from ever holding a hat at any place on his own property is not competent under section 144. 18 WR Cr 47; 23 CWN 141 foll. (Walmsley and Suhrawardy, JJ.) Benowari Lal Ram v. Protab Krishna Majumdar.

AIR 1922 Cal 569 : 35 Cal LJ 397 : 71 IC 516 : 26 Cal WN 663 : 24 Cr LJ 164.

—S. 144 (1) — Scope of — Hat — Order restraining the holding of — Doing of lawful act on one's land.

The only ground for the issue of an order under S. 144 restraining the holding of a rival Hat was that the Magistrate was satisfied from the report of the police that by opening a new Hat within 1/2 a mile from the old and long established Hat the petitioners were about to disturb the public tranquillity. Held, that an injunction could not be issued to prevent a lawful act upon a man's own property. The order in the form in which it was issued was without jurisdiction. The holding of a Hat on a man's own property is not in itself a wrongful act and therefore any ulterior consequence which may arise from it, cannot give rise to any proceeding against the owner of the land for committing an act likely to cause a breach of the peace, unless those ulterior consequences are made the basis of the proceedings. The law as regards preservation of public peace is based on an apprehension that either a certain person or persons are likely to commit breach of the peace by their own acts or that they are likely to do wrongful acts which may occasion other people to commit breach of the peace. (Holmwood and Imam, JJ.) Rakhal Das Singh v. Emperor.

19 CWN 248 : 15 IC 655 : 13 Cr LJ 511.

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(c) Public meetings.

——Order prohibiting holding of meeting within certain area — Validity of.

An order under S. 144, addressed to the public forbidding them to hold meeting within a certain area is a definite order and does not contravene the provisions of S. 144. A distinction should not be drawn between a particular place and an area. (Henderson and Khundkar JJ.) Nisarendu Dutt v. Emperor.

AIR 1939 Cal 703 : 43 CWN 1061 : 12 RC 318 : ILR (1939) 2 Cal 507 : 184 IC 856 : 41 Cr LJ 105.

——Right to express opinions in public — Election — Election speech — Limits.

Every man has a right to express his opinions in public and in general he should be entitled to the support of the Police and magistracy in the expression of those opinions. Provided that these opinions are made with a genuine desire to convince people and not to irritate them, he ought

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not to be muzzled merely because those who dislike these opinions threaten opposition. Where interference with the right to speak is expected, the opponents should ordinarily be prohibited from interfering and not the reformers from speaking. Occasions do, however, arise when in the interests of peace, private rights have to be encroached upon by those responsible for public order. The Police cannot always have a number of men posted wherever persons are expressing opinions which may call upon them the wrath of the people among whom they are speaking. This is particularly the case during election, when public meetings are many and when feelings run high. (Horwill, J.) Srikanta Iyer, In re.

AIR 1937 Mad 311 : (1937) MWN 56 : 45 MLW 249 : 9 RM 625 : 168 IC 720 : 38 Cr LJ 582.

——S. 144 (3) — Lahore District, if "particular place" — Order relating to such District — Legality.

District of Lahore is a particular place within the meaning of S. 144 (3).

The fact that the order forbade meetings in so large a place as the Lahore District does not make the order 'illegal' although it might have made the order difficult to enforce for one reason or another. (Coldstream, J.) Abdul Karim v. Emperor.

AIR 1937 Lah 80 : 17 Lah 515 : 38 PLR 964 : 9 RL 474 : 167 IC 284 : 38 Cr LJ 354 (2).

——Meetings prohibited on roads, etc. situate within specified limits — Order, if prohibits meetings in public places.

Where an order under S. 144, Criminal P. C., directs the public to refrain from organising or taking part in meeting on any road, thoroughfare or street situate within certain specified limits, the order cannot be construed as prohibiting the doing of those acts in a public place like a temple or a graveyard. (Beaumont, C. J. and Sen, J.) Sorab Shavaksha v. Emperor.

AIR 1935 Bom 33 : 36 Bom LR 1129 : 7 RB 359 : 154 IC 637 : 36 Cr LJ 547.

——Public meeting —If Magistrate empowered to interfere with right of public discussion.

The right of public discussion is a right of every subject and persons convening a meeting to discuss religious matters are not doing anything unlawful. If owing to ill-feeling prevailing between certain persons likely to attend the meeting or any other cause, a breach of the peace is expected, the Magistrate should proceed under S. 144 to prevent that expected breach but should not stop the meeting by arresting the appellants. (Saunders, J.) Nga Ti v. Maung Kyaw Yan.

AIR 1918 Upp Bur 53 : (1916) 2 UBR 157 : 11 Bur LT 59 : 39 IC 480 : 18 Cr LJ 512.

19. Rescission or alteration of order—Sub-ss. (4) and (5).

——S. 144 (4) — Order under.

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Clause (4) contemplates only change in nature of order and not a change in party against whom the order is made — Order changing party is without jurisdiction. (Ramaswami J.) Dewan Singh v. Deo Narain Singh.

AIR 1951 Pat 253 : 52 Cr LJ 809.

——S. 144 (4) — Ex parte order under S. 144 — Application under S. 144 (4) — Applicant offering evidence — Duty of Magistrate.

When an application under S. 144 (4) is made and when the petitioner offers evidence to show cause against the continuance of the ex parte order against him, it is the obvious duty of the Magistrate to hold an enquiry and he cannot without holding that enquiry anticipate what the nature of the evidence would be and confirm his ex parte order. (Yahya Ali J.) In re Krishnavatharam.

AIR 1948 Mad 117 : 60 MLW 488 (2) : (1947) 2 MLJ 191 : 1947 MWN 483 : 49 Cr LJ 93.

——S. 144 (5) — S. 144 (5) is mandatory — Application under — Applicant must be given opportunity to support it.

The provision contained in S. 144 (5), Criminal P. C., is mandatory. Where an application is presented for cancelling the order, the applicant must be given an opportunity to support his application and it should not be dismissed summarily. (Ba U J.) Thakin Aung Bala v. District Magistrate, Rangoon.

AIR 1939 Rang 181 : 11 R Rang 516 : 1939 Rang LR 294 : 182 IC 23 : 40 Cr LJ 645.

——While it is open to the Superior Magistrate to alter or rescind the order of the Inferior Magistrate, he cannot make a new order. (Pandrang Row, J.) Ramaswamy Iyengar v. Ramasami Patrachar.

1938 MWN 974 : (1938) 2 MLJ 503.

——Conditional order — Against whom can be made absolute.

Under S. 144, the conditional order can be made absolute only against the party which was called upon to show cause. (Varma, J.) Panchkesar Kaur v. Madho Singh.

19 PLT 796 .

——Ss. 144, 530, 529 (f), 531 — Transfer of application under S. 144 (4) by District Magistrate — Validity of, when he had no power to transfer.

Where the District Magistrate transfers an application made under S. 144 (4), Criminal P. C., even assuming that there was no power of transfer, the order of transfer cannot be regarded as void and cannot be set aside even if it be assumed that the District Magistrate has no power in view of S. 529 (f), and S. 531. (Pandrang Row, J.) Sevugan Chettiar v. Karuppan Chettiar.

AIR 1937 Mad 487 : 45 MLW 367 : (1937) MWN 210 : 10 RM 152 : 170 IC 193 : 38 Cr LJ 864.

——Subordinate Magistrate passing order — Interference.

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While it is open to the Superior Magistrate to alter the order passed by the Subordinate Magistrate, he cannot alter the party to be affected by the order. When a Subordinate Magistrate allows a certain party to perform a certain festival on a certain day, it cannot be prohibited by the Superior Magistrate on an application by another party under S. 144 (4), Cr. P. C., or where a Subordinate Magistrate prohibits one party from doing a certain act, the Superior Magistrate cannot under S. 144 (4), Cr. P. C., prohibit the opposite party from doing that act. (Pandrang Row, J.) Sevugan Chettiar v. Karruppan Chettiar.

AIR 1937 Mad 487 : (1937) MWN 210 : 45 MLW 367 : 10 RM 152 : 170 IC 193 : 38 Cr LJ 864.

——Jurisdiction conferred under S. 144 (4) — Nature of — New order, if can be made.

The jurisdiction conferred by S. 144 (4), Cr. P. C., is neither appellate nor revisional and that jurisdiction is a special one that can be exercised only if the actual terms of the section are strictly satisfied. Jurisdiction is given to him by this sub-section only to alter or rescind the order by which the petitioners before him are said to be aggrieved, and he may remove altogether the grievance complained of or reduce its extent as it were, but he cannot make a new order which would constitute a fresh grievance to a party not before him. (Pandrang Row, J.) Sevugan Chettiar v. Karruppan Chettiar.

AIR 1937 Mad 487 : (1937) MWN 210 : 45 MLW 367 : 10 RM 152 : 170 IC 193 : 38 Cr LJ 864.

——Superior Magistrate, if can rescind or alter order under S. 144.

Section 144, Criminal P. C., contains no provision which suggests that a Superior Magistrate is prohibited from rescinding or altering an order merely because a Subordinate Magistrate has done so or refused to do so. (Horwill, J.) Srikanta Iyer, In re.

AIR 1937 Mad 311 : 9 RM 625 : (1937) MWN 56 : 45 MLW 249 : 168 IC 720 : 38 Cr LJ 582.

——Ss. 144 (4), 192, 528 — Order under S. 144 — Power of District Magistrate to rescind such order — Inherent powers.

The power of a District Magistrate to entertain an application under S. 144 (4) of the Cr. P. C., is not lost by reason of the fact that the Sub-Divisional Magistrate subordinate to him had already dealt with an application made under that subsection to him. The provisions of that section are intended for the protection of the liberty of the subject and should be construed liberally. The Cr. P. C., does not confer a power on Superior Magistrate to suspend orders of Subordinate Magistrates and the weight of authority in the Madras Presidency is against the view that Criminal Courts in the mofussil have inherent power to make such orders in the interest of justice.

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A Superior Magistrate can rescind or alter an order under S. 144 without hearing the person at whose instance the original order was passed; the only limitation on his power is that he should hear the parties who apply for rescission or alteration before declining to do so.

The power conferred by S. 144 (4), Cr. P. C., to rescind or alter orders made by Subordinate Magistrate cannot be delegated or transferred by the District Magistrate who is moved in the matter to a Sub-Divisional Magistrate. (Pandrang Row, J.) Mooka Pandaram v. Sinnu Muthiriyan.

AIR 1937 Mad 167 : (1936) MWN 1089 : 44 MLW 686 : 71 MLJ 761 : 9 RM 328 : ILR (1937) Mad 171 : 166 IC 77 : 38 Cr LJ 125.

——Order under S. 144 — Likelihood of breach of peace — Merely speculative and distant likelihood, whether sufficient — Setting aside ex parte order — Mode of taking evidence.

It is quite legal to prohibit the wearing of Gandhi caps or the carrying of any other symbols if they amount to participation in or encouragement of revolutionary propaganda or any movement such as the civil disobedience movement calculated to paralyze the administration. But before such an order is passed, it should be shown by evidence which a reasonable mind may accept as satisfactory, that it was necessary to pass such an order in the interests of the public peace.

An act prohibited under S. 144 must only be so prohibited if it is likely to prevent obstruction, etc., or disturbance of the public tranquillity, etc., and this likelihood or tendency must be a reasonable or proximate one. It is not enough to say that by stretching several possibilities one after the other it is possible to establish a connection of cause and effect between the act prohibited and disturbance of the public tranquillity. That connection must not be merely speculative or distant. The question whether in each particular case the case falls on one side or the other is one eminently of sound judgment and no rules can be laid down for its exercise. Where there are special facts relating to a particular locality as to which the local authority is the best judge, the opinion of that authority will not easily be disturbed; but where there are no special circumstances and the matter is one of general impression, the absence of any near or reasonable connection between the prohibited act and the supposed danger to public tranquillity will be a ground upon which the High Court is bound to act.

When an ex parte order under S. 144 is called in question under Cl. (4) of that section, the normal procedure should be for evidence to be recorded in the usual way by examination and cross-examination of witnesses in open Court and though there is no provision in the Criminal P. C. prescribing the mode of taking evidence in such an enquiry, it is desirable whenever possible to

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adopt the normal procedure. (Pandalai, J.) Satyanarayana Choudhari v. Emperor.

AIR 1931 Mad 236 : 60 MLJ 378 : 1930 MWN 841 : Ind Rul (1931) Mad 513 : 33 MLW 632 : 131 IC 449 (2) : 32 Cr LJ 744.

——When setting aside the order made by the Magistrate under S. 144, the District Magistrate cannot direct him to draw proceedings under S. 145.

The Sub-Divisional Magistrate on a police report drew up proceedings under S. 144. The District Magistrate set them aside holding they were wrongly drawn up and directed the Sub-Divisional Magistrate to draw up proceedings under S. 145.

Held, that though under S. 144 (4) he was entitled to set aside an order of the Sub-Divisional Magistrate there was no provision in law whereby he could direct the Sub-Divisional Magistrate to draw up proceedings under any other section. The proper course for District Magistrate in such case was to make a reference to the High Court under S. 438. 24 Cal. 391, Foll. (Suhrawardy and Graham, JJ.) Kedarnath Sikdur v. Bijoymandal.

AIR 1929 Cal 751 : 33 CWN 723 : 123 IC 647 : 1929 Cr C 385 : 31 Cr LJ 544.

——The District Magistrate has power to rescind the order passed by Sub-Divisional Magistrate.

An order was passed by the Sub-Divisional Magistrate under S. 144. On appeal by the other party, the District Magistrate passed the following order: "In view of all the circumstances of the case, the shape of the lands and the admission of the Chamars, I am inclined to think that the masters of the 1st party are in present possession of the lands in dispute. I, therefore, rescind the order passed by the learned Sub-Divisional Magistrate". It was contended that the District Magistrate had no power to pass such an order, as it was a substitution of an order of his own.

Held, that there was no attempt to substitute an order of his own but was merely rescinding an order of Sub-Divisional Magistrate under S. 144, which quite clearly he had power to do. 3 PLJ 287, Rel. on. (Wort, J.) Ramkrishun v. Qamruddin.

109 IC 126 : 10 AI Cr R 166 : 29 Cr LJ 478.

——Ss. 144, Cl. 4 and 145 — Rescission — Special jurisdiction.

There is neither revisional nor appellate jurisdiction in the Magistrate under S. 144, Cl. 4, Cr. P. C., but there is still a special jurisdiction vested in him by the statute to rescind or alter any order made under S. 144 either by himself or by a Magistrate subordinate to him or by his predecessor in office. (Das, J.) Mahanta Satruhan Das v. Makhan Das.

1 Pat LR 53 (Cr) : 72 IC 171 : 24 Cr LJ 331.

——Ss. 144 (4) and 145 (1) — Procedure — District Magistrate directing Sub-Divisional Magistrate to substitute proceedings under S. 145 in place of S. 144 case.

A District Magistrate acts illegally in directing a Sub-Divisional Magistrate to substitute a proceeding under S. 145 (1) in lieu of that under S. 144 as under S. 145 (1) it is only the Magistrate who substitutes the proceedings that has to satisfy himself by exercise of his own independent judgment and upon proper materials, for example, police reports, pleadings of the parties, as to the existence of a reasonable apprehension of the peace. (Jwala Prasad, J.) Tiloki Rai v. Emperor.

2 Pat LT 392 : 68 IC 34 : 23 Cr LJ 498.

——S. 144 (4) — Scope of — 'Alter' does not mean substitution of names.

The word, 'alter', in S. 144 (4), Cr P. C., cannot mean the substitution of the names of one party for those of the other. The District Magistrate, in going beyond altering or rescinding an order, acts without jurisdiction. (Odgers, J.) Muthu Kumarswami Nadar v. Mahomed Rowther.

AIR 1922 Mad 76 : 42 MLJ 352 : 15 LW 423 : 67 IC 500 : 30 MLT 148 (HC) : 1922 MWN 177 : 23 Cr LJ 404.

——S. 144 (4) — Scope of — District Magistrate cannot reverse an order of the Magistrate — Proceedings started as ordered by the District Magistrate ultra vires.

Although under the provisions of S. 144 (4) it is open to the District Magistrate to rescind or alter any order made under the section by himself or any Subordinate Magistrate the purview of that section has been held not to cover a reversal of an order on grounds which interfere with the discretionary power of the Magistrate who originally made the order but to comprise only the rescission or alteration of the order when the reason for its having been made no longer exists or has varied in such a manner as to make an alteration necessary as a corollary. "Even though on proper grounds the District Magistrate may rescind or alter, an order made by another Magistrate" under S. 144 it is not open to such Magistrate at all to direct that other Magistrate to initiate proceedings under S. 145, Cr. P. C., and a proceeding started in obedience to such a direction is ultra vires. (Bucknill, J.) Cheddi Lall Marwari v. Mahabir Prasad Sukul.

AIR 1921 Pat 445 : 2 Pat LT 650 : 64 IC 507 : 23 Cr LJ 27.

——Rescission — Order by Acting District Magistrate — Petition for rescission by whom to be disposed of.

An order passed under S. 144 by the acting District Magistrate can be altered or rescinded only by the then District Magistrate and the latter cannot transfer an application for rescission to the former. (Ayling J.) Sudarsanam Aiyyangar v. Elayavalli Srinivasachari.

AIR 1916 Mad 533 : 26 IC 666 : 16 Cr LJ 74.

CRIMINAL P. C. (V of 1898), S. 144

20. Revision.

(a) Jurisdiction of High Court.
(b) Grounds of interference.
(c) Powers of High Court.
(d) Time-spent order—Interference.

20. Revision.

(a) Jurisdiction of High Court.

——Petition by A to restrain B from raising structure — Magistrate considering C as proper party and granting interim injunction against C — C succeeding in getting injunction set aside — Revision by A against order in favour of C, impleading C.

Where on the allegation made by A in his petition to restrain B from raising certain structure, the Magistrate considered C to be the proper party and granted an interim injunction against C who showed cause and succeeded in having the injunction vacated and in obtaining an order in his favour, the revision petition by A against an order in favour of C, impleading C as opposite party cannot be thrown out on the ground that C was not named as a party in the petition filed by A before the Magistrate. (Mohamed Akram and Pal JJ.) Rashid Allidina v. Jiwandas Khemji.

AIR 1943 Cal 35 : ILR (1942) 1 Cal 488 : 46 CWN 136 : 15 RC 538 : 204 IC 370 : 44 Cr LJ 288.

——Ss. 144, 435, 439 — Scope of S. 144 — Order under S. 144 — If revisable by High Court.

At least after the amendment of S. 435, Criminal P. C., by S. 116, Cr. P. C. Amendment Act (Act XVIII of 1923), by which sub-s. (3) of S. 435, Criminal P. C., has now been omitted, the High Court has revisional jurisdiction also in cases disposed of under S. 144, Criminal P. C. Even before this amendment, the High Courts exercised this power of revision under S. 107 of then Government of India Act and this power has always been considered salutary and necessary. A Magistrate, no doubt, is responsible for the peace of his district. But from this, it does not follow that the High Court has no duty to see whether this responsibility has been properly discharged in any particular instance. Further, the peace of the district as contemplated by S. 144, Criminal P. C., is not unconcerned with individual interests and the particular individual who feels aggrieved by the interference or non-interference should not be driven out of Court simply because the Magistrate thought fit to act in a certain manner. Moreover, S. 144, Criminal P. C., is not limited in its operation only to cases of possible breach of general peace of the district. The section contemplates cases of obstruction, annoyance, or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquillity, or a riot or an affray. Hence the aggrieved party is entitled to come up in revision

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(a) Jurisdiction of High Court
to the High Court. (Mohamad Akram and Pal JJ.) Rashid Allidina v. Jiwandas Khemji.

AIR 1943 Cal 35 : ILR (1942) 1 Cal 488 : 46 CWN 136 : 15 RC 538 : 204 IC 370 : 44 Cr LJ 288.

——Ss. 144, 435 — High Court, if can revise order under S. 144.

The High Court has power to consider under S. 435, Criminal P. C., whether a Magistrate has jurisdiction to pass an order under S. 144, Criminal P. C. (Das, J.) Thakin Ba Thoung v. Emperor.

AIR 1934 Rang 124 : 7 R Rang 57 : 12 Rang 283 : 151 IC 211 : 35 Cr LJ 1300.

——Proceedings under S. 144 are revisable irrespective of the nature of the order passed. (Lakshmana Rao J.) Krishnaswamy Thathachariar v. Srinivasa Chariar.

1934 MWN 742.

——Ss. 144, 561-A — Order under S. 144 — Jurisdiction of High Court to suspend the order — S. 144 (4), if bars revision to High Court.

The High Court can, in the exercise of its inherent powers under S. 561-A, Criminal P. C., or S. 107, Government of India Act, suspend the operation of the order of a Sub-Divisional Magistrate under S. 144, Criminal P. C.

The jurisdiction conferred by S. 144 (4) of the Criminal P. C., upon a Magistrate to rescind or alter an order made under the section by himself or any Magistrate subordinate to him or by his predecessor-in-office is neither appellate nor revisional jurisdiction; it is a special jurisdiction conferred by a special provision of the statute, and S. 144 (4) cannot bar a revision to the High Court. (Walsh, J.) Pitchai v. Muhammad Atham.

AIR 1932 Mad 720 : (1932) MWN 726 : 36 MLW 461 : Ind Rul (1932) Mad 793 : 63 MLJ 594 : 56 Mad 149 : 139 IC 773 : 33 Cr LJ 826.

——Orders under S. 144 are not judicial orders that could be interfered with in exercise of the revisional powers of the High Court. AIR 1928 Mad 1108 and AIR 1925 Mad 473, Fol. (Reilly, J.) Suthadi Alaga Thewar v. G. A. Baker.

116 IC 137 : 1929 MWN 694 : 2 M Cr C 200 : 13 A I Cr R 48 : 55 MLJ 621 : 30 Cr LJ 629.

——Remedy.

If a Magistrate abuses his power under S. 144 the remedy is probably to invoke the power of S. 107, Government of India Act. (Ramesam, J.) Vedappan Servai v. Perianan Servai.

AIR 1928 Mad 1108 : 113 IC 279 : 12 AI Cr R 17 : 52 Mad 69 : 1928 MWN 779 : 28 MLW 566 : 1 M Cr C 304 : 55 MLJ 621 : 30 Cr LJ 119.

——Revision—Suit for declaration and perpetual injunction—Questioning of the legality of the order —An order remains unaffected by the declaratory decree.

CRIMINAL P. C. (V of 1898), S. 144—20. Revision—
(a) Jurisdiction of High Court

If orders under S. 144 Cr. P. C. are illegal or ultra vires, the proper way to question them is by a Criminal Revision Petition to the High Court. It is possible to question their validity in a properly framed suit to which the Government and its officers are parties. The existence of the criminal orders justifies a refusal on the part of the Court to enquire into the Civil rights of the parties. The orders under S. 144 would still remain in force unaffected by any declaratory decree. But such orders are always open to reconsideration by Government. (Ayling, C. J. and Odgers, J.) Baba Sah v. K. G. Md. Hussain Sahib.

AIR 1922 Mad 123 : 42 MLJ 179 : 15 MLW 63 : 68 IC 180 : 1921 MWN 867

——Revision — Functions of High Court.

Section 435 (3), Cr. P. C., expressly excludes the exercise of revisional powers in cases under S. 144. The High Court has merely to satisfy that the facts found fall within the section so as to give jurisdiction to the Magistrate. (Shah and Hayward, JJ.) In re Cawasjee Jehangir Readymoney.

AIR 1920 Bom 367 : 22 Bom LR 157 : 62 IC 409 : 22 Cr LJ 521.

——Ss. 144 and 435 — Revision — Proceeding under — Government of India Act, S. 107.

An order under S. 144 is not open to revision under S. 435, Cr. P. C., but only under S. 107 of the Government of India Act, and that on questions of jurisdiction where grave miscarriage of justice would otherwise result. (Sadasiva Aiyar and Odgers, JJ.) Ponnappa v. Sri Vanamamalai.

AIR 1920 Mad 847 : 10 LW 480 : 1919 MWN 872 : 53 IC 483 : 20 Cr LJ 755.

——Revision — Magistrate's jurisdiction to pass such order.

Magistrate, passing an order under the section should use his own discretion in every case and that too very carefully; he should also state the emergency that led to the passing of such order. A High Court can interfere with such order under S. 15, Charter Act. (Miller and Sadasiva Aiyar, JJ.) Govinda Chetti v. Perumal Chetti.

AIR 1916 Mad 662 : 30 IC 453 : 38 Mad 489 : 16 Cr LJ 629.

20. Revision.

(b) Grounds of interference.

——Ss. 144 and 439 — Revision.

Though the aggrieved party has not resorted to the remedy available under S. 144 (4) in the first instance it is no ground for refusing to interfere in revision. (Lakshmi Narain J. C.) Jagat Ch. Paul v. Dhirendra Chandra.

AIR 1953 Tripura 6 (2) : 1953 Cr LJ 1469.

——Order under S. 144 rescinded — Proceedings under S. 145 started on same day — No statement in either as to likelihood of breach of peace — Magistrate possessing materials indicating such likelihood — Omission held was not fatal to proceedings and no ground for interfering in revision.

CRIMINAL P. C. (V of 1898), S. 144—20. Revision—
(b) Grounds of interference

(Kuppuswami Aiyar J.) Swaminatha Pillai v. Raghvachariar.

AIR 1947 Mad 161 : 1946-2 MLJ 433 : 1946 MWN 733 : 231 IC 263 : 48 Cr LJ 730.

——The High Court has power to interfere when the order passed by the Magistrate is vitiated.

Where the elements essential to action under S. 144 are shown to exist upon materials before the Court, the High Court will in exercising its powers respect the opinion of the local authorities both as to the gravity of the danger and as to the steps necessary for the maintenance of peace. But if the grounds for action as stated in the order are either unfounded in fact or insufficient in law or if it is shown that the order against the public as framed violates the conditions laid down by S. 144 then it is the duty of the High Court to interfere in revision. (Pandalai, J.) Sriramamurthi v. Emperor.

AIR 1931 Mad 242 : 1930 MWN 849 : 131 IC 649 : 33 LW 640 : 1931 Cr C 362 : 60 MLJ 370 : 32 Cr LJ 763.

——Facts not peculiarly within knowledge of Magistrate — High Court's power to interfere.

Where there are special facts relating to a particular locality as to which the local authority is the best judge the opinion of that authority will not easily be disturbed, but where there are no special circumstances and the matter is one of general impression the absence of any near or reasonable connection between the prohibited act and the supposed danger to public tranquillity will be a ground upon which the High Court is bound to act. Order under S. 144 prohibiting wearing of Gandhi caps set aside. (Pandalai, J.) Satyanarayana Choudari v. Emperor.

AIR 1931 Mad 236 : 1930 MWN 841 : 131 IC 449 : 33 LW 632 : 1931 Cr C 332 : 60 MLJ 378 : 32 Cr LJ 744.

——High Court will interfere where the order is wholly without jurisdiction.

Although under Clause (4) of S. 144 it is incumbent on the petitioners to go in the first instance before the District Magistrate before coming up in revision to the High Court and ordinarily that is the practice in the High Court still the High Court will interfere where the order of the Sub-divisional Magistrate is wholly without jurisdiction. AIR 1923 Pat 435 (F. B.), Foll. (Kulwant Sahay, J.) Akal Mahton v. Mahabir Mahton.

AIR 1924 Pat 145 : 75 IC 531 : 5 PLT 90 : 1 Pat LR Cr 223 : 24 Cr LJ 947.

——S. 144 (4) and (5)—Revision.

If the Magistrate tries to use S. 144 as a means of grant of perpetual injunction, the High Court has the power to interfere. The order is made without jurisdiction. (Odgers, J.) Muthu Kumarasami Nadar v. Mahomad Rowther.

AIR 1922 Mad 76 : 42 MLJ 352 : 15 LW 423 : 67 IC 500 : 30 MLT 148 : 1922 MWN 177 : 23 Cr LJ 404.

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(b) Grounds of interference

——Ss. 144 and 439—Revision.

Any order passed by Magistrate after he has passed a final order under S. 144 regarding the sale of property kept in custody is ultra vires and liable to revision. (Sultan Ahmed, J.) Mainavati v. Dulla Manji.

AIR 1920 Pat 155 : 57 IC 817 : 21 Cr LJ 657.

20. Revision.

(c). Powers of High Court.

——Ss. 144, 435, 439—Order under S. 144— High Court, if can interfere in revision.

The opinion of a District Magistrate expressed under S. 144, Criminal P. C., although entitled to great weight, is not absolute and cannot interfere with the right of the High Court under the revisional sections of the Criminal P. C., to interfere with the order or set it aside. In proper cases, the High Court has full power to interfere with such orders.

The propriety of the order as well as its legality can be considered by the High Court in revision, though in examining the propriety of the order, the High Court will undoubtedly give due weight to the opinion of the District Magistrate who is the man on the spot and responsible for the maintenance of public peace in his District. (Young C. J., Bhide and Muhammad Munir, JJ.) P. T. Chandra, Editor, Tribune v. Emperor.

AIR 1942 Lah 171 : 15 RL 65 : 44 PLR 297 : ILR (1942) Lah 510 : 201 IC 572 : 43 Cr LJ 747 (F B).

——Order under S. 144 — District Magistrate's power to rescind it—High Court, if can interfere.

It is within the competence of the District Magistrate to rescind any order under S. 144 of a Sub-Divisional Magistrate. He ought certainly to do so if the order is wrong and he may also always do so when he finds that the order is not required for immediate prevention of a breach of the peace. Beyond all question, the High Court will never re-impose an order under S. 144 which the District Magistrate who is responsible for the peace of his District, does not wish and in his discretion has rescinded. (Macpherson and Dhavle, JJ.) Manu Khan v. Sunder Singh.

AIR 1934 Pat 313 : 15 PLT 216 : 7 RP 136 : 151 IC 835.

——Ss. 144, 439—Proceedings under S. 144—Accused's right to copy of information—Revision—Interference— Principles— Revisional powers, nature of—Order prohibiting public from putting up national flags in houses, legality of.

Proceedings under S. 144, Criminal P. C., are judicial and subject to revision by the High Court and a person against whom such proceedings are instituted is entitled to a copy of the information received by the Magistrate in order to show that it was unfounded or insufficient.

The powers of the High Court under S. 439, Criminal P. C., are general and ought, as far as

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(c) Powers of High Court

practicable, to be left untrammelled and free so as to be fairly exercised according to the exigencies of each case. They cannot be cut down by decisions.

In the case of orders under S. 144, Criminal P. C., where the elements essential to action under the section are shown to exist upon materials legally before the Court, the High Court will, in exercising its powers, respect the opinion of the local authorities both as to the gravity of the danger and as to the steps necessary for maintenance of peace. But where those essential elements do not, upon a fair view of the evidence, exist, the High Court will not blindly uphold the order of the Local Magistrate because he has chosen to say that they do exist.

If the grounds for action, as stated in the order, are either unfounded in fact or insufficient in law, or if it is shown that the order against the public as framed violates the conditions laid down by S. 144, Criminal P. C., it is the duty of the High Court to interfere.

An order under S. 144, Criminal P. C., may be addressed to the public generally when frequenting or visiting a particular place. No order can be passed against the public without that limitation as to place, namely, that it must be one, whether publicly or privately owned, which at the time when the prohibition operates, the public frequent or visit. The public cannot, therefore, be prohibited from putting up national flags in private houses. (Pandalai, J.) Sriramamurthy, In re.

AIR 1931 Mad 242 : 1930 MWN 849 : 60 MLJ 370 : 33 MLW 640 : Ind Rul (1931) Mad 553 : 131 IC 649 : 32 Cr LJ 763.

——The section empowers the High Court, with a view to secure the ends of justice, to direct a party to re-deliver goods to the proper person who is wrongly ordered to deliver them to another under S. 144. 3 MLW 498 and 28 CLJ 483, Foll. (Iqbal Ahmad, J.) (Hafiz) Hafizuddin v. Laborde.

AIR 1928 All 14 : 105 IC 815 : 8 AI Cr R 362 : 8 LRA Cr 149 : 26 ALJ 83 : 50 All 414 : 28 Cr LJ 991.

——Ss. 144, and 145—Revision —Dispute regarding immovable property— Duty of Magistrate—Revision.

The use of S. 144 is a suitable method of avoiding a breach of the peace only if it is clear upon a reading of the police report that the claim of the party creating disturbance is not a claim made in good faith. 11 CWN 271, Foll.; 39 Cal. 150, Ref. But where there is a dispute about possession, proceedings under S. 145 should be initiated; proceedings under S. 144 should not be resorted to to evade an inquiry into possession. The practice of issuing notices purporting to be under S. 144 of the Cr. P. Code calling upon both parties to attend on a fixed date and submit

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statements is a mere evasion of the law. The notices are in effect notices under S. 145 (1) (4) of the Cr. P. Code and where such notices have been issued, the High Court will interfere in revision and direct that the procedure prescribed in Chap. XII of the Code be followed. 1 PLJ 336, Ref. (Roe and Imam, JJ.) Kaniz Amina v. Emperor.

AIR 1918 Pat 663 : 3 Pat LJ 243 : 4 Pat LW 354 : 47 IC 65 : 19 Cr LJ 869.

——Ss. 144 and 439—Revision —Ex parte order —Failure to state material facts— Omission to record reasons—Remedy—Maintainability—Flying of Home Rule flag—Legality.

The High Court rarely interferes in revision till other remedies open to a petitioner in the Lower Courts have been exhausted, especially in matters under S. 144, Cr. P. C., where the magistrate is responsible for the peace of the District. Per Sadasiva Aiyar and Phillips, JJ. —Allegations against the honesty of the conduct and intentions of responsible officials ought not to be made in an affidavit without adequate and strong materials being indicated in the affidavit itself in support of such allegations. Per Sadasiva Iyer, J. Phillips, J. dissenting. Under S. 144 Cr. P. Code it is necessary for a magistrate to record in his order his reasons for considering the occasion to be one of emergency. Magistrate should indicate with reasonable fulness when passing ex parte orders the materials on which they come to the conclusion that there was an emergency which justified their proceedings to pass orders ex parte. Under S. 144, Cr. P. Code, it is the duty of the Magistrate to support lawful acts as far as possible. The flying of a Home Rule Flag is a perfectly legal act and if unreasonable people threatened to commit a breach of the peace the Magistrate ought not to treat it as a case of emergency unless through temporary circumstances the Magistrate had no sufficient police or other force at his command to prevent an immediate breach of the peace, so as to bind them over to keep the peace. (Sadasiva Aiyar and Phillips, JJ.) Venkataramana Aiyar v. Emperor.

AIR 1919 Mad 1004 : 22 MLT 323 : 1917 MWN 721 : 6 LW 456 : 43 IC 88 : 19 Cr LJ 56.

——Ss. 144, 435 (3)—Interference with the order of Magistrate having jurisdiction—Revision.

In a case in which in case of need the Magistrate had jurisdiction to make an order the Court in revision should not consider whether that order was or was not the best that could have been made. (Miller, J.) Bandalapalli Pedda Bangappah v. Moka Subbarayadu.

4 Ind Cas 1128 : 5 MLT 217 : 11 Cr LJ 194 (1).

——Ss. 144 and 439—Power of Magistrate to take disputed property into custody.

Where on disputes arising between head members of a Church and its Secretary, the Magistrate draws up a proceeding under S. 144,

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(c) Powers of High Court

he cannot at the same time direct even with the consent of both parties, that certain articles concerning which the parties were in dispute be removed into the custody of the Court and should remain there for two months or until the decision of a civil suit regarding the same, then pending before the High Court. The High Court has power in such a case to order that matters should be restored to exactly the same condition as the Magistrate found them in, before he passed the order removing them to Court's custody. (Holmwood and Ryves, JJ.) Leang Mow v. Tchun Chun.

12 CWN 1044 : 8 Cr LJ 230.

——Ss. 144, 435—Revisional power of High Court.

If the orders passed by a Magistrate under S. 144 are within the scope of the section and he has jurisdiction to pass them it is not open to the High Court, as a court of revision, to consider their propriety in view of S. 435 (3) Cr. P. C. (Banerjee and Handley, JJ.) Isab Mondal v. Emperor.

8 CWN 373 : 1 Cr LJ 248.

20. Revision.

(d) Time-spent order—Interference.

——Order under — Revision — Interference with spent Order—Practice of Patna High Court.

It is not the usual practice of the Patna High Court to interfere with an order of the Magistrate under S. 144, Criminal P. C., which has spent its force by lapse of time. But where the order affects the future rights of the parties, the High Court will interfere if it is illegal, even if the order has spent its force. Thus, where an order purported to have been passed under S. 144 (4) was without jurisdiction and, if it were not set aside, the parties would have been under misapprehension as to their rights to the crops which were standing, the order was set aside in revision though it had spent its force. (Ramaswami, J.) Dewan Singh v. Deo Narain Singh.

AIR 1951 Pat 253 : 52 Cr LJ 809.

——Order spent —Revision where the order under S. 144 had spent its force the High Court refused to interfere in revision. (Rai, J.) Ram Prasad v. Shankar Prasad.

AIR 1951 Pat 90 : 52 Cr LJ 778.

——Order under— Order spending itself— Order, if can be set aside.

Even though the period of 60 days during which an order under S. 144 remains in force has expired and the order has spent itself out the High Court can set aside the order. (B. Vasudevamurthy, J.) Siddegowda v. Kullegowda.

AIR 1951 MYS 17.

——Ss. 144, 439—Order under S. 144—Interference —Practice of Patna High Court.

It is the practice of the Patna High Court to decline to interfere in revision with an order under S. 144, Criminal P. C., when the order

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would become time-expired in a few days. (Dhavle, J.) Madho Singh v. Emperor.

AIR 1942 Pat 331 : 8 BR 670 : 23 PLT 243 : 14 RP 658 : 200 IC 316 : 43 Cr LJ 637.

——Order spending itself —Interference by High Court.

It is not the usual practice of the Patna High Court to interfere with an order which has spent its force unless there are special reasons for such interference. (Mohamad Noor, J.) Rama Barik v. Emperor.

AIR 1940 Pat 185 : 6 BR 480 : 12 RP 637 : 5 Cut LT 54 : 187 IC 511 : 41 Cr LJ 463.

——Order under S. 144, spent itself by lapse of time—Interference by High Court—Practice.

Where the order under S. 144, Criminal P. C., has spent its force by lapse of time, it is not the usual practice of the High Court to interfere with an order which it was within the powers of the Magistrate to pass, unless for very special reasons. (Rowland, J.) Hansraj Prasad Singh v. Abdul Jabbar.

AIR 1935 Pat 461 : 1 BR 812 : 8 RP 161 (2) : 16 PLT 624 : 157 IC 760 : 36 Cr LJ 1268.

——Ss. 144, 145—Magistrate assuming function of Civil Court—Order, if can be interfered with in revision when effect of order has expired.

The propriety of the order whereby a Magistrate assumes the function of the Civil Court and makes an order which practically amounts to an order of ejectment on grounds of title may certainly be questioned, though he may be technically justified by the fact that he records his apprehension of a breach of the peace. But where the effect of the order has expired and the matter is before the Civil Courts, the application for revision of the order will be dismissed. (James, J.) Chhakan Ram v. Raghunath Ram.

AIR 1935 Pat 145 : 1 BR 286 (1) : 7 RP 440 : 154 IC 184 : 36 Cr LJ 474.

——Ss. 144, 439 — Order under S. 144 — Belated application for revision— Order ceasing to be in force by efflux of time— Interference, if proper— Remedy of aggrieved party— Order passed as an emergency measure—Jurisdiction.

Where an application for revision against an order under S. 144, Criminal P. C., is made and the order has ceased to be in force by efflux of time, it should not be interfered with in revision, and if the applicant feels aggrieved, his remedy is by the filing of a declaratory suit in the Civil Court.

When an order purports to have been passed as an emergency measure, the Magistrate passing the order is the sole and the best judge of the emergency which constrained him to pass the order under S. 144 and he has full jurisdiction to pass it. (Nanavutty, J.) Abdul Samad v. Emperor.

AIR 1934 Oudh 87 (1) : 11 OWN (CC) 74 : 6 RO 299 (1) : 147 IC 672 : 35 Cr LJ 472.

CRIMINAL P. C. (V of 1898), S. 144 — 20. Revision —(d) Time-spent order—Interference

——Ss. 144, 145—Bona fide dispute about possession—Procedure—Order under S. 144 having spent its force—Interference by High Court.

Although where there is a bona fide dispute of possession between the parties, the Magistrate ought to proceed under S. 145, Criminal P. C., and not under S. 144, the High Court will not interfere with the order under S. 144, after it has spent its force by reason of the expiry of the period to which its effect is confined. It will be unnecessary and undesirable to direct the Magistrate to begin under S. 145, when his order under S. 144, has already spent its force and his observations regarding possession will have little, if any, effect upon the question of actual possession. (Dhavle, J.) Jagarnath Singh v. Ramjas Singh.

AIR 1933 Pat 584 (2) : 6 RP 274 : 146 IC 557 : 35 Cr LJ 88.

——Order under S. 144—Decision upon rights of parties, such decision being unnecessary—Order, if can be set aside after its expiry.

When a Magistrate passes an order under S. 144, Criminal P. C., under an apprehension that a breach of the peace might arise between the parties, he should not go beyond the necessities of the case. When such an order purports to decide upon the rights of the parties, and such decision is not at all necessary for the passing of the order, the High Court can interfere to set it aside even though it may have expired. (Courtney-Terrell. C. J.) Joint Agents, I. G. N. and Ry. Co. v. Narain Singh.

AIR 1933 Pat 185 : Ind Rul (1933) Pat 221 (2) : 14 PLT 379 : 144 IC 228 : 34 Cr LJ 717.

——Where the High Court finds that the trying Magistrate has jurisdiction to pass an order under S. 144, it will not send back the matter to the Magistrate notwithstanding that the order has expired, so that he may begin the proceedings again, as regards the accused's showing cause against the order. 13 CWN 195; 20 CWN 758; 20 CWN 981; 23 CWN 145 and AIR 1928 Cal 446, Ref. (Rankin, C. J. and Patterson, J.) Dabiruddin Mohammad v. Emperor.

AIR 1930 Cal 131 : IR 1930 Cal 497 : 125 IC 273 : 1930 Cr C 131 : 31 Cr LJ 804.

——High Court can revise order under S. 144 provided revisional jurisdiction is exercised within 2 months of order. (Beasley, C. J. and Cornish, J.) Muthuswami Servaigaram v. Thangammal Ayyar.

AIR 1930 Mad 242 : 121 IC 833 : 31 MLW 16 : 1930 MWN 82 : 2 M Cr C 277 : 53 Mad 320 : 58 MLJ 148 : 31 Cr LJ 324.

——Patna High Court does not generally interfere with orders under S. 144, the operation of which has expired.

An order was passed under S. 144 restraining the petitioners from interfering with the possession of the other side. On the last day on which the order could operate, the Magistrate complained

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against the petitioners under S. 188, Penal Code, in respect of a breach of his above order. Next day the petitioners applied to the District Magistrate to set aside the order under S. 144, and on his rejecting the application, they applied to the High Court for considering the order under S. 144.

Held, that the general practice of most of the Judges of the Patna High Court is against interfering with orders under S. 144, the operation of which has expired and the fact that the petitioner was concerned with the validity of the order in view of the prosecution under S. 188, Penal Code, was not a special circumstance, for interference. 20 CWN 981, Dist. (Macpherson, J.) Karan Singh v. Ram Kishun Lal.

AIR 1928 Pat 480 : 10 AI Cr R 200 : 109 IC 113 : 29 Cr LJ 465.

——When an order under S. 144 has expired by efflux of time the High Court will not revise it nor will it adjudicate upon the merits thereof. (42 MLJ 352, Diss.) (Spencer, J.) Kuppu Odayar v. Poomalai Goundan.

AIR 1924 Mad 896 : 82 IC 472 : 1924 MWN 675 : 47 MLJ 439 : 25 Cr LJ 1304.

——Ss. 144 (5) and 439—Revision —Time expired order—Revision.

Where an order under the section had expired by efffux of time at the time of the hearing of a revision against it, the Court will not adjudicate on the question in issue. (Spencer and Seshagiri Iyer, JJ.) Sawminatha Mudaliar v. Gopalakrishna Naidu.

AIR 1916 Mad 626 : 28 IC 160 : 16 Cr LJ 272.

21. Service of order.

——Order under S. 144 (1) not to be directed to Superintendent of Police.

The order under S. 144 (1) must be served in the manner provided by S. 134 and there is nothing in S. 144 which authorises the District Magistrate to address an order to the Superintendent of Police. Sub-section (3) of S. 144 provides that an order under that section may be directed to a particular individual, or to the public generally. There is nothing to suggest that it is an order directed to the head of the police in the district. (Harries C. J. and Das Gupta, J.) Hafizul Ekbal v. Gopal Sardar.

AIR 1951 Cal 472 : 53 CWN 487 : 52 Cr LJ 856.

——Ss. 144, 537—Service of order—Knowledge of—Irregularity in.

Where actual knowledge of the prohibitory order under S. 144 on the part of the accused is established failure to leave a duplicate copy of the order with the accused is an irregularity in the service which would not render the whole proceeding void: 16 Cal 9, Foll. (Sen, J.) The King v. Darbarilal Shaw.

AIR 1949 Cal 677 : 54 Cal WN 256 : 51 Cr LJ 59.

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——Ss. 144, 134—Copy of order not stuck up as required by S. 134—Irregularity, when material.

Where, as required by S. 134, no copy of an order under S. 144 is stuck up, the irregularity would be immaterial provided the persons whom it was sought to prosecute in respect of any disobedience of the order had knowledge of its contents.

Held, that the service of the order which was only a precis of formal order under S. 144, was insufficient, giving no sufficient information regarding prohibited acts and being inconsistent with main order and no conviction could be sustained. (Edgley, J.) Abu Husain v. Emperor.

AIR 1940 Cal 358 : 44 CWN 641 : 13 RC 157 : ILR (1940) 2 Cal 110 : 190 IC 228 : 41 Cr LJ 864.

——It must be shown that order was communicated to accused.

Before it can be said that the accused had knowledge of the order, it must be shown that its terms were communicated to them. The Sub-Inspector merely giving his own interpretation of it is quite a different thing. (Henderson and Khundkar, JJ.) Niharendu Dutt v. Emperor.

AIR 1939 Cal 703 : 43 CWN 1061 : 12 RC 318 : ILR (1939) 2 Cal 507 : 184 IC 856 : 41 Cr LJ 105.

——Order under S. 144—Presumption of service of order—Onus of proof of ex parte nature.

If a person takes the troubles to go to a Magistrate and gets an order upon another person restraining him from doing something, prima facie, it is very unlikely for him not to take steps so that the other person may know of the restraint imposed upon him and the burden of proving that the order was not served upon him and that the proceedings were conducted behind his back is on the person against whom the order was made. (Rankin, C. J.) Aswini Kumar v. Emperor.

AIR 1931 Cal 262 : 53 CLJ 64 : Ind Rul (1931) Cal 447 : 131 IC 271 : 32 Cr LJ 680.

22. Ss. 144, 145 and 107.

——Ss. 144, 145 and 107 — Proceedings under S. 107—Imminent danger of breach of peace—Magistrate can further take proceedings under S. 145—Enquiry held by Magistrate held not one made with a view to take action under S. 144—Proper procedure.

See ibid, S. 107.

AIR 1953 Raj 202 : 1953 Cr LJ 1843.

——Ss. 144 and 145—Scope.

Ss. 144 and 145 deal with possession and possession only, and they are intended to protect persons in possession and to prevent breaches of the peace. The Magistrate acting under these sections has nothing whatsoever to do with the title to the land.

Where the petitioners were in possession and they had sown the paddy crop which was about ready for harvesting, Magistrate cannot issue an injunction against them restraining them from

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entering upon the land. If they were in wrongful possession then the opposite party had other remedies. His remedy was not by way of an injunction under S. 144. That form of injunction could only be issued to protect existing possession and not to oust a person in possession from possession. (Harries C. J. and S. R. Das, J.) Sairu Seikh v. Shyamlal Sardar.

AIR 1952 Cal 200 : 1952 Cr LJ 566.

——Relative scope of Ss. 107, 144 and 145—Intention of Legislature was to arm Magistrates with such power and authority as to enable them to take immediate steps to prevent an imminent breach of peace— Magistrate can therefore resort to S. 107 after an order was issued under S. 144 or can open proceedings under S. 145 in supersession of order passed, either under S. 144 or S. 107 and take appropriate steps.

See ibid, S. 107.

1946 Rang LR 115.

——Ss. 144, 145—Habitual and unjustified use of S. 144, as substitute for Ss. 107 and 145, deprecated.

There is no justification for periodical recourse to S. 144, Criminal P. C., on the plea of emergency in cases where emergency exists only by reason of neglect of the authorities to take proper order when the facts first came to their notice. What the Court deprecates is the habitual and unjustifiable use of S. 144, as a substitute for Ss. 107 and 145. (Davis J. C. and Weston, J.) Viru Kamu v. Dewandas Jhamandas.

AIR 1940 Sind 158 : 13 RS 110 : ILR (1940) Kar 508 : 190 IC 618 : 41 Cr LJ 952.

——Repeated orders under S. 144, to avoid decision of dispute which may be dealt with under S. 145, or S. 107, if can be passed.

A party against whom an order is passed in proceedings under S. 145 has to go to the Civil Court and cannot, unless he does so, be heard to repeat his claim in the Criminal Court. The position when an order is passed under S. 144 is quite different: such an order decides nothing about the respective rights of the parties and may be no more than an interference with private rights required in a temporary emergency. To repeat such an order on the ground of maintaining the status quo is to compel the unsuccessful party to resort to the Civil Court even though the Criminal Court may have done nothing to look into the rights of the parties, and further, indirectly to prolong the effect of the original order beyond the period of two months fixed in Sub-S. (6) of the section. Such a use of the section is altogether unwarrantable. It is not open to a Magistrate by passing repeated orders under S. 144, Cr. P. C., to avoid the decision of a dispute which may be appropriately dealt with under S. 145 or S. 107, Cr. P. C., and the power given by S. 144 is essentially an emergent power which has sometime to be passed

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in disregard of private rights. An order of that kind cannot possibly be allowed by repetition to spell a more or less permanent interference with private rights. (Dhavle, J.) Chrestien F. E. v. Carter.

AIR 1939 Pat 512 : 20 PLT 374 : 12 RP 232 : 6 BR 30 : 184 IC 240 : 40 Cr LJ 895.

——Ss. 144, 107, 145 —S. 144, when applicable — Jurisdiction of Magistrate— Interference by High Court.

It cannot be laid down as a general proposition that an oder under S. 144, Criminal P. C., cannot be passed without taking evidence nor can it be said that in every case of dispute regarding land, S. 144 is inappropriate and proceedings ought to be had under S. 107 or S. 145, Criminal P. C. Section 144 is of general application and contains nothing which ousts the Magistrates' jurisdiction in cases of bona fide disputes as to possession of land. But where S. 107 or S. 145 will meet the requirements of the case, S. 144 is not an appropriate remedy and if it is found that the danger was not so imminent that it could not be otherwise averted, an order under S. 144 will generally be held to have been made without jurisdiction. What the Court deprecates is the habitual and unjustifiable use of S. 144 as a substitute for Ss. 107 and 145. Where it can be shown that upon the information before the Magistrate the conditions required by S. 144 had not been established so that the use of S. 144 instead of S. 107 or S. 145 was a mere abuse of process of the Court, or, that though made with jurisdiction, the order had resulted in something akin to the denial of the right of fair trial then the High Court will certainly interfere in exercise of their powers of superintendence.

Though a Magistrate can pass an order under S. 144 in a case where one party not in good faith is merely setting up a pretence of claim and not a bona fide dispute but it cannot be considered to be a good practice habitually to prejudge without evidence both the merits of the dispute and the question whether it is bona fide. Magistrates are entrusted with wide powers to enable them to discharge their important duty of providing for the prevention of a breach of the peace; but such powers are not intended to be habitually used for the settling of disputed points which call for a decision on evidence. (Rowland, J.) Jagrupa Kumari v. Chotey Narain Singh.

159 IC 455 : 2 BR 83 : 8 RP 279 : 37 Cr LJ 95.

——Ss. 144, 107—Prohibiting party from holding hat on particular days— Legality— Which party causing disturbance, difficult to know— Proper procedure.

A Magistrate's power extends to the passing of an order restraining individuals from doing acts perfectly lawful in themselves. Consequently, a Magistrate can legally issue an order prohibiting a land-holder from holding a hat on a particular

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spot in his own estate on particular days on the ground that such an order is likely to prevent a riot or affray.

Where the difficulty is to say which of the parties to the dispute is the party who is creating a disturbance, the proper procedure is under S. 107, Criminal P. C., and not under S. 144, Criminal P. C. The real disadvantage of passing an order under S. 144 without going into the merits of the dispute is that on the expiry of the period which is the limit of the duration of such an order, the whole dispute is left to break out again. The party who, on the previous occasion was successful in getting a S. 144 order in his favour will probably try to use the order to prejudice the mind of the Court against his opponent in the subsequent proceedings; but such an order is no evidence of right or of possession antecedent to the date of the order. Therefore, to pass an order under S. 144 and to leave it as if that order disposed of the dispute finally is merely postponing trouble and inviting its recurrence in an aggravated and more complicated form at a later date. (Rowland, J.) Hansraj Prasad Singh v. Abdul Jabbar.

AIR 1935 Pat 461 : 1 BR 812 : 8 RP 161 (2) : 16 PLT 624 : 157 IC 760 : 36 Cr LJ 1268.

——A case in which it would have been better to draw up proceedings under S. 145 should not be proceeded with under S. 144. (Allanson, J.) Latifau v. Mohammad Ibrahim.

AIR 1927 Pat 432 : 106 IC 223 : 28 Cr LJ 1039.

——Ss. 144 and 145—Scope—Distinction between.

Under S. 144 no order can be passed where a question as to the factum of the delivery of possession is raised between the parties. The judgment-debtor and the members of his family, his tahsildar and other servants and in fact those claiming under him have no right to dispute the delivery of possession if they were parties to the certificate and the sale proceedings; but under-raiyats or intermediate holders of the land, not parties to the proceedings, in the property and the survey department which resulted in the sale of the property on the dakhaldehani had a right to dispute the actual service of the dakhaldehani on the spot.

Where possession is publicly delivered with full notice to all the persons in possession of the property, none of them are entitled to dispute the delivery of possession though they may be living some miles off.

Though ordinarily a dispute of land should be enquired into in a proceeding under S. 145 of the Code of Criminal Procedure yet when the possession in law is vested in the 1st party, as against any person claiming to be in possession of the property by reason of the writ of delivery of possession, Section 145 is not at all necessary. There is no bona fide claim of possession of the 2nd party. In other words there is no dispute

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in law as to the possession of the property. S. 145 summarily determines the right to possession. Order XXI, rule 95 as well as the similar provision in the Bihar and Orissa Public Demands Recovery Act, actually puts the purchaser into possession of the property and a person claiming a right to the present possession of the property has either to move the Court delivering the possession or to go to the Civil Court. (Jwala Prasad, J.) Kamla Prasad v. Gobindh Sahay.

AIR 1922 Pat 13 : 3 Pat LT 826 : 71 IC 785 : 24 Cr LJ 241.

——Ss. 144 and 145—Scope—Dt. Magistrate can revise order on any ground—Government of India Act, S. 107. AIR 1921 Pat 392 : 22 Cr LJ 685, Overruled.

There is no reason why the power given in the 4th clause of the section should be confined to cases where there has been a change of circumstances since the original order was made. There is nothing in the wording of the 4th clause which limits the powers of the Magistrate in the sense indicated, and there is no valid reason why words of limitation should be read into the section which would have the effect suggested. The words "alter or rescind" clearly empower the District Magistrate to modify or cancel the order upon any ground whatsoever.

Per Mullick, J.—Where S. 107 or S. 145 will meet the requirements of the case, S. 144 is not an appropriate remedy, and if it is found that the danger was not so imminent that it could not be otherwise averted, an order under S. 144 will generally be held to have been made without jurisdiction. Where it is clear upon the materials before the Magistrate that one party is in possession and that another, whose claim to possession is a mere pretence is threatening to interfere with that possession, the Magistrate is clearly entitled to resort to the special summary procedure of S. 144, if immediate prevention or speedy remedy is desirable. Sometimes it may even be necessary to take action against the party who is actually in possession, but in every case it must be shown that the conditions required by the section exist. What is deprecated is the habitual and unjustifiable use of S. 144 as a substitute for Ss. 107 and 145.

Per Jwala Prasad, J.—S. 144 is a larger and more general section than S. 145. An order under that section can be made under various circumstances including a danger of a breach of the peace. S. 145 is of limited scope and applies only when there is a danger of a breach of the peace. The former is discretionary, the latter is mandatory. The latter provides for a thorough enquiry into the dispute as to possession of the parties which tends to a breach of the peace. Therefore when the special condition of S. 145 is fulfilled S. 144 then yields to S. 145 in the sense

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that when he finds that there is a real dispute tending to a breach of the peace the Magistrate is bound to institute a proceeding under S. 145 and enquire into the possession of the parties irrespective of any order that he might have originally passed under S. 144.

When one party is clearly in the wrong and threatens to usurp the rights of another, who is in actual possession of the land in dispute the proper remedy is an order under S. 144 or S. 107 Cr. P. C. AIR 1921 Pat 392 : 22 Cr LJ 685 overruled. (Miller, C. J., Mullick and Jwala Prasad, JJ.) Sheebalak Singh v. Kamaruddin.

AIR 1922 Pat 435 : 2 Pat 94 : 3 Pat LT 573 : 68 IC 149 : 4 UPLR (Pat) 57 : 1 Pat LR Cr 2 : 1922 Pat HCC 241 : 23 Cr LJ 549 (FB).

——Ss. 144, 107 and 145—Scope.

It is well to indicate the relative value of the preventive Ss. 107, 144 and 145 of the Code in a dispute relating to property, where the first party claims to be in exclusive possession and the second party claims to be in joint possession. If the property is found to be in joint possession of both the parties, then no order under S. 145 can be passed and the danger to a breach of the peace by the contending parties with a view to exclude the other from the possession of the property in dispute can only be averted or avoided by binding both the parties or by binding both of them under S. 107, or none of them has a right to exclude the other from joint possession. If, on the other hand one of them is found to be in exclusive possession of the property then the other side can be restrained under S. 144 from interfering with the exclusive possession of the other party, and if possible by binding him down. Unless the exclusive possession of one of the parties is undisputed or is admitted or is concluded by some decision of a competent Court, an enquiry into the claims of the parties as to exclusive or joint possession must be held. It is only when after an enquiry a decision is arrived at as to the possession of the contending parties, separate or joint, an order under S. 144 or 107 against one of the parties will not be justifiable. Such an order will prejudice the other party and will exclude him from the possession of the property whether exclusive or joint. No Court by its proceeding or order can allow such an advantage to one of the parties. Therefore in a dispute of this kind the danger to a breach of the peace can be averted by issuing a temporary order upon both the parties under S. 144 if the case is of urgency and holding an enquiry into the possession of the parties before confirming the order. The danger to a breach of the peace can also be averted by at once instituting a proceeding under S. 145 by attaching the property in dispute pending the enquiry. (Jwala Prasad, J.) Ratan Chand v. Mohan Lal Sahu.

AIR 1922 Pat 228.

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——Ss. 144 and 145—Scope of—Possession doubtful —Order by Magistrate ultra vires— If Magistrate can set aside.

S. 145 and not S. 144 applies where the possession is disputed. A Magistrate has no jurisdiction to pass under S. 144 an order which amounts to an ejectment decree of a Civil Court. Where the order passed is ultra vires it cannot be set aside under Sub-section (4) of that section but can be set aside in revision only by the High Court. (Jwala Prasad, J.) Madan Lal v. Emperor.

AIR 1921 Pat 392 : 2 Pat LT 484 : 63 IC 621 : 22 Cr LJ 685.

(Overruled in AIR 1922 Pat 435 : 23 Cr LJ 549 (FB))

——Ss. 144 and 145 — Scope of — Dispute as to possession—Decision on documents.

Unless the possession of a party is undisputed S. 144, Cr. P. Code can have no application and a magistrate has no jurisdiction to pass final orders under S. 144. Where the dispute related to the possession of lands and the Magistrate upon a perusal of a certain document by which other lessees had relinquished their possession in favour of the opposite party, passed orders under S. 144 against the petitioners who were lessees of the disputed lands. Held, that the Magistrate ought to have instituted proceedings under S. 145, Cr. P. Code and after taking evidence as to actual possession in respect of the disputed land, decided the case effectively and conclusively, so far as the Criminal Courts are concerned. (Jwala Prasad, J.) Bhairo Gope v. Emperor.

AIR 1920 Pat 215 : 1 Pat LT 377 : 57 IC 662 : 21 Cr LJ 646.

——Ss. 144 and 145—Scope of—Dispute regarding immoveable property — Proceedings under S. 144 when proper—Power of Dt. Magistrate to interfere—Cl. (4) of S. 144 of the Cr. P. Code contemplates only a change in the nature of the order made, not a change in the party against whom it is made.

A District Magistrate cannot set aside an order of a Magistrate against one party and substitute a similar order against the opposite party. If it is clear from a persual of the police report that the claim of the disturber of the peace is a mere pretence, a Magistrate is justified in acting under S. 144. The party entitled to possession should not be harassed by proceedings under S. 145. (Roe and Imam, JJ.) Ganpat Singh v. Emperor.

AIR 1918 Pat 672 : 3 Pat LJ 287 : 4 Pat LW 357 : 47 IC 76 : 19 Cr LJ 880.

——Ss. 144 and 145—Scope of.

S. 145 intends definitely to settle quarrels after a fair hearing of each side and so S. 144 should not be applied to evade an enquiry into the question of possession with reference to the evidence. S. 144 is a suitable method to avoid a breach of

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peace if the party's claim is not made in good faith. If the facts necessitate proceedings under S. 145, S. 144 must not be applied. (Roe and Ali Imam JJ.) Kaniz Amina v. Emperor.

AIR 1918 Pat 663 : 3 Pat LJ 243 : 4 Pat LW 354 : 47 IC 65 : 19 Cr LJ 869.

——Ss. 144 and 107—Scope of—Order not sufficient—S. 107 to be resorted to.

When one order under S. 144 does not prove sufficient for the purpose, the right procedure to adopt is to commence proceedings under S. 107 Cr. P. Code. (Chitty and Walmsley, JJ.) Bishessur Chuckurbutty v. Emperor.

AIR 1916 Cal 472 : 20 CWN 758 : 24 CLJ 272 : 34 IC 312 : 17 Cr LJ 200.

——Ss. 107, 144 and 145—Dispute relating to land likely to cause a breach of the peace—Discretion of Magistrate to proceed either under S. 107 or Ss. 144 and 145.

See 2 **Cr LJ 769 (Cal).**

23. Successive orders.

——Repeated orders.

Repeated summary orders under S. 144 in favour of one of the several belligerent parties having conflicting claims to particular right or property would be beyond the scope and object of the section and hence improper. As such the order should be interfered with by the High Court but always subject to the condition that the Magistrate must have had other legally available means of preventing imminent breach of the peace. (Order set aside though no longer in force for efflux of time). (Ray C. J. and Narasimham, J.) Taturam Sahu v. State of Orissa.

AIR 1953 Orissa 96 : 17 Cut LT 48 : 1953 Cr LJ 731.

——Imposition of restriction of indefinite duration by successive temporary orders— It is against spirit of S. 144. (U Aung Tha Gyaw, J.) Directors of the Sooratee Bara Bazar Co., Ltd. v. The Union of Burma.

1948 BUR LR 365.

——Proceeding initiated under S. 144, Criminal Procedure Code—Subsequently proceeding cancelled as being defective—Later valid proceeding and an effective order—If legal.

There is no authority to hold that if a proceeding initiated under S. 144, Criminal P. C., is cancelled as being defective, that will prevent the Magistrate from initiating a valid proceeding and passing therein an effective order, to enure in its operation for the statutory period of two months. The subsequent order cannot be said to be an order without jurisdiction, as it offends against the principle that there can be no successive orders, under S. 144, Criminal P. C., having the effect of extending its duration for more than two months. (Ray, J.) Gouri Shankar Rai v Emperor.

AIR 1947 Pat 290 : 1946 PWN 169 : 13 BR 201 : 228 IC 378 : 48 Cr LJ 93.

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——Renewal of original order— Sub-S. (6) cannot be evaded by repeating orders.

It is not open to a Magistrate to evade Sub-S. (6) of S. 144, by repeating orders under S. 144. Renewal of the original order is without jurisdiction.

Where without considering the allegations of the petitioners that they had only rebuilt the wall on the foundations of the old wall and that the civil suit filed by the opposite party to decide the issue of encroachment was pending, the Magistrate makes use of S. 144 to give effect to his view of the title by requiring the petitioner to demolish the wall on pain of prosecution, the order is unjustified and amounts to usurpation of the jurisdiction of the Civil Court. (Dhavle, J.) Ram Narain v. Parmeshar Prasad.

AIR 1942 Pat 414 : 8 BR 722 : 23 PLT 644 : 15 RP 28 : 200 IC 776 : 43 Cr LJ 722.

——Temporary injunction of Civil Court— Effect of.

Successive extensions of an order under S. 144, Cr. P. Code are invalid but they can be supported as fresh orders. Such successive orders may amount to an abuse of the process of court especially when the civil court has passed an order of temporary injunction against one party. It is the duty of the criminal courts to respect the opinions of civil courts and in taking steps to preserve peace to take action only against those who are infringing the rights of others and protect those who wish to exercise their right and not prohibit the latter's lawful enjoyment of rights. 27 MLJ 628, 22 MLJ 251; 20 CWN 758, Ref. (Ramesam, J.) Murari Naicken v. Aiyasami Naicken.

AIR 1923 Mad 15 : 16 LW 452 : (1922) MWN 612 : 69 IC 369 : 23 Cr LJ 689.

——Ss. 144 and 439—Successive orders—Revision—Order without notice.

Successive orders under S. 144 are open to objection. An order under S. 144 cannot be passed without serving notice on the opposite party to show cause. (Jwala Prasad, J.) Gouri Dutt v. Gobind Singh.

AIR 1920 Pat 496 : 1 Pat LT 44 : 53 IC 829 : 20 Cr LJ 829.

——Ss. 144 and 107—Successive orders— Time expired order—Renewals of—Impropriety of.

S. 144 should not be used for anything in the nature of a permanent expedient without the sanction of the Local Government. Successive renewals of orders under S. 144, Cr. P. C., are illegal. The proper procedure would be to take action under S. 107, Cr. P. C. (Roe and Jwala Prasad, JJ.) Rashbehari Singh v. Jagnarain Rai.

AIR 1917 Pat 154 : 3 PLJ 130 : 44 IC 589 : 19 Cr LJ 365.

——Successive orders—Enlargement of time by successive orders—Illegality.

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The enlargement of time by passing successive orders under the section is illegal. (Chitty and Walmsley, JJ.) Bishesswar v. Emperor.

AIR 1916 Cal 472 : 20 CWN 758 : 34 IC 312 : 24 CLJ 272 : 17 Cr LJ 200.

——Successive orders— Improper— Proper procedure.

Repeated recourse should not be had to the provisions of S. 144, Cr. P. Code in the same dispute. If danger to the public peace continues the proper course is to obtain an order of Govt. under S. 144, Cl. (5) or to take action under S. 107 or Ch. XII of the Cr. P. C. (Ayling, J.) Swaminatha v. Gopalakrishna.

AIR 1916 Mad 1106 (1) : 30 IC 144 : 16 Cr LJ 592.

——Ss. 144 and 107 — Dispute as to holding of rival hats—Order under S. 144— Legality—Duration of order —Extension of— Power to pass ad interim order.

A Magistrate cannot, by passing successive orders under S. 144, Cr. P. C., extend the operation of an order indirectly beyond the time limited by sub-s. 5 of s. 144. An order under sub-s. 2, forbidding certain persons from establishing a hat at a certain place with a vague direction to them forbidding interference with the trade of another hat, is irregular and vague and cannot stand. As long as an order under S. 144 has legal operation, no intermediate or interlocutory order not contemplated by sub-s. 4 can be passed. When the High Court has issued a rule in any case, it takes full seisin of the case, and it is the High Court alone that can pass ad interim orders in the case. The Magistrate against whose order the rule is issued has no such jurisdiction. The most appropriate section of the Code to deal with cases of rival hats which may cause a breach of the peace is S. 107. (Mitra and Ormond, JJ.) Satish Chandra Roy v. Emperor.

11 CWN 79 : 4 Cr LJ 433.

24. Validity of order.

——Mandatory order.

Where the Magistrate by his order proposed to go in person to the bandh in question and to the bed of the stream and to make certain alteration in them with a view to restoring them to the condition in which he believed them to have been when the record-of-rights was prepared.

Held that the order was wholly without jurisdiction. (Shearer and Jamuar, JJ.) Har Kishun Singh v. Chhotan Mahton.

AIR 1951 Pat 494 : 52 Cr LJ 638.

——Order by second class Magistrate, legality of.

An order made by a Magistrate second class under S. 144, Criminal P. C., is ultra vires and without jurisdiction particularly when the object of the Magistrate in issuing the order is not so much to prevent a breach of the peace as to preserve evidence that might be required in another suit. (Kuppuswami Ayyar, J.) Vijayaranga Reddiar v. Muthuswami Reddiar.

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AIR 1945 Mad 58 : (1944) 2 MLJ 208 : 57 MLW 515 : 1944 MWN 600 : 218 IC 109 : 46 Cr LJ 421.

——Person not in possession cannot be put in possession under S. 144—Such direction, if clearly separable from rest, does not vitiate the whole order.

The powers of a Magistrate under S. 144 extend to a direction in the proper circumstances, to any person "to abstain from a certain act or to take certain order with certain property in his possession or under his management." If the property was not in the possession or under the management of the Sub-Inspector of Police, the Magistrate has no authority to put him in possession of that property and direct him to harvest the crop. Such a direction, however, if clearly separable from the rest of the order of the Magistrate, does not vitiate the order as a whole. (Reuben, J.) Rupan Singh v. Emperor.

AIR 1944 Pat 213 : 17 RP 110 : 11 BR 70 : 215 IC 152 : 46 Cr LJ 18.

——Ss. 144, 145 — Petition under S. 145 (4) — Order not purporting to be under any provision of law—No decision that dispute is likely to lead to breach of peace—Effect of order.

Where on a petition presented under S. 145 (4), Criminal P. C., an order is passed which really does not purport to be passed under S. 145 or 144 and does not in fact purport to be an order passed in the exercise of any jurisdiction conferred on the Magistrate by any section of the Criminal P. C., or any other provision of law, and the Magistrate did not decide as a matter of fact whether this dispute was likely to lead to a breach of the peace or a disturbance of public tranquillity, the essential preliminary to assuming jurisdiction thus not being found to exist, his order must be deemed to be an order having no legal force, and any expression of opinion contained therein must be deemed to be void of legal force or effect. In such circumstances, there is no order which requires to be formally set aside or modified in revision; the order complained of being one which has really no legal force or effect. But such an order must necessarily prejudice a party and it is not at all desirable that the Magistrate who has jurisdiction should omit to exercise his jurisdiction in the manner prescribed by law but on the other hand, proceed to deal with it in a way not contemplated by the law. (Pandrang Row, J.) Vattathara S. J. v. Reverend Koshi.

AIR 1937 Mad 494 : 45 MLW 473 : (1937) MWN 636 : 10 RM 198 : 170 IC 390 : 38 Cr LJ 892.

——Magistrate acting for Sub-Divisional Magistrate— Sub-Divisional Magistrate returning from tour on day on which order is passed —Jurisdiction.

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Where a Magistrate was dealing with the file of the Sub-Divisional Magistrate during the latter's absence on tour, and the Sub-Divisional Magistrate returned from tour on the morning on which an order was passed but it was not known that the Sub-Divisional Magistrate would attend Court and he did not do so until late:

Held, that tne order of the Magistrate was not without jurisdiction. (Mukerji and S. K. Ghose, JJ.) Abdul Majid v. Nripendra Nath.

AIR 1934 Cal 393 : 6 RC 480 : 38 CWN 556 : 148 IC 773 : 35 Cr LJ 881.

——An order under S. 144 cannot be passed by a Magistrate when in effect there are no materials before him justifying the order. (Macpherson, J.) Radhe Das v. Jairam Mahto.

AIR 1929 Pat 714 : 123 IC 73 : 1929 Cr C 586 : 31 Cr LJ 466.

——Order based on private inquiry from opponent and in absence of petitioner is liable to be set aside.

If Magistrate comes to the conclusion that there is no likelihood of a breach of the peace and therefore no action need be taken either under S. 144 or under S. 147, Cr. P. Code, he would be justified in doing so. Where a Magistrate disposes of the matter by taking evidence ex parte, by going over to the office of the second party and making enquiries in the absence of the petitioners and without giving them an opportunity of adducing their own evidence and examining witnesses and coming to a distinct finding as to the alleged right of easement set up by the petitioners and comes to the conclusion that the right is with the second party and that if the petitioners go upon the land they do so at their own risk.

Held, in effect he makes an order in favour of the second party under S. 147 and prevents the petitioners from going upon the land. Such a procedure is wholly unjustifiable and the order must be set aside. (Kulwant Sahay, J.) Narendra Nath Sarkar v. East Indian Railway.

AIR 1924 Pat 717 : 77 IC 807 : 5 PLT 419 : 2 Pat LR Cr 209 : 25 Cr LJ 455.

——Ss. 144, 145 and 146—Procedure— Preliminary order— Attachment— Restoration of property to one of the parties—Effect of.

A Magistrate passed a preliminary order under S. 145 (1) and subsequently attached the properties under S. 145, Sub-S. (4). Eventually he refused to take evidence and dismissed the petition as unnecessary in view of a prior order under S. 144, Cr. P. Code. At the same time he directed delivery of possession of the properties to one of the parties. Held that the order must be set aside as illegal and without jurisdiction. (Venkatasubba Rao, J.) Palani Goundan v. Kulandai Velu Goundan.

AIR 1922 Mad 437 : 43 MLJ 716 : 72 IC 541 : (1922) MWN 484 : 24 Cr LJ 429.

CRIMINAL P. C. (V of 1898), S. 144—24. Validity of order

——Scope of— No sufficient material— Order not valid.

Petition of the petitioners whose goods were detained on the petition of the lessee of a certain ghat for action against certain persons for refusal to pay tolls did not disclose any ground for an order against them. The report of the police who were ordered to report as there was likelihood of breach of peace, according to which report the order complained against was drawn up gave the Magistrate no material for proceeding against three petitioners. There was in the body of the report a general remark about Marwaris in Murliganj; but certain persons were specially named at the end of the report and the Police Sub-Inspector prayed for proceedings against them: Held, the effect of the report must be understood as limiting its purpose to these named persons. The only other document is the petition of the lessee and this admittedly makes no reference to the petitioners at all. The Magistrate had no materials before him upon which he could make an order against petitioners. (Ross, J.) Panchi Ram v. Sheikh Md. Abdulla.

AIR 1922 Pat 239.

——Effect of order—Order can be questioned in proceedings under S. 188 of the Penal Code.

The legality of the order under S. 144 of the Code can be questioned in proceedings under S. 188 of the Penal Code taken against the accused for disobedience of the order. (Newbould and Ghose, JJ.) Jiaratdin Mahammad v. Emperor.

AIR 1921 C 258 : 34 CLJ 578 : 67 IC 200 (1) : 23 Cr LJ 376.

——Order under, indefinite—Order is bad.

An order under S. 144 directing a party 'not to commit any act that may likely induce a breach of the peace and not to attempt to take forcible possession of the village which is not actually in his possession' is bad in law as being indefinite and not in accordance with the terms of S. 144. (Brett and Stephen, JJ.) Bibee Kulsum v. Umatal Mehdi.

11 CWN 121 : 4 Cr LJ 456.

——Order directing division of crop.—Magistrate acting under S. 144 cannot act as a Civil Court and pass an order of irrevocable nature. An order directing the division of crops between the tenants and a rival Zamindar, is an order of an irrevocable nature, and as such is bad. (Pratt and Handley, JJ.) Umatal Fatima v. Nemai Charan Banerjee.

32 C 154 : 2 Cr LJ 168.

——Scope of— Orders based on decision of claim of right—Validity— Claim of right —Jurisdiction of Criminal Courts.

There is no provision of law which vests in the Criminal Court the power first to decide the question of right and then to proceed to base an

CRIMINAL P. C. (V of 1898), S. 144—24. Validity of order

order upon it. Where therefore A applies under S. 144 Cr. P. C., for an order directing B to bring certain idols belonging to B and in B's possession to A's place for celebration of certain festival, basing his claim on long usage and custom and the Magistrate orders B to take the idols to A's place.

Held, that the order was wholly unwarranted by law and was without jurisdiction. (Ameer Ali and Pratt, JJ.) Kamal Narain Adhikari v. Raja Jotindra Mohan Roy.

8 CWN 376 : 1 Cr LJ 251.

25. Who can pass order.

——An order under S. 144, Cr. P. C., can be passed by either (1) the Sub-divisional Magistrate or (2) a first or second class Magistrate specially empowered by the Government or by the District Magistrate. A first class Magistrate not so empowered cannot pass any order under S. 144, Criminal P. C., even if he is charged of current duties of the Sub-divisional Magistrate on that date. (Panigrahi and Narasimham, JJ.) State v. Sankar Charan Sahu.

AIR 1952 Orissa 215 : 18 Cut LT 75 : 1952 Cr LJ 1106.

——S. 144 (1) and (3)—Commissioner of police, if can issue prohibitory crder.

Section 144 (1) empowers a Commissioner of police to direct any person to abstain from forming a procession or gathering or assembling of five or more persons in any street or public place in the town. Commissioner can pass such an order upon the public generally as distinguished from "any person": AIR 1934 Cal. 393 and AIR 1940 Cal. 345, Disting. (Sen, J.) Saroj Hazra v. Emperor.

231 IC 224 (Cal.).

——Second Class Magistrate—Meat shop—Powers of.

A Second Class Magistrate cannot issue an order for the closing of a Jhafka shop under S. 144. (Stogdon, J.) Kirpa Singh v. Emperor.

26 PWR Cr 1912 : 16 IC 169 : 13 Cr LJ 601.

——S. 145.

SYNOPSIS.

1. Addition of parties.
2. Applicability and scope.
(a) Cases arising under Bengal Alluvial Lands Act.
(b) Object of.
(c) Pendency of Civil Proceedings.
3. Appointment of receiver.
See Note 4 (b)—Appointment of receiver and Criminal P. C., S. 146.
4. Attachment.
See also Cr. P. C., S. 146.
(a) Appointment of custodian.
(b) Appointment of receiver.
(c) Attachment of crops and trees

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(d) Attachment of moveables.
(e) Cancellation of preliminary order.
See also : Note 6 (e)—Consequential orders after cancellation.
(f) Effect of attachment.
(g) Mode of attachment.
(h) Other temporary order.
5. "Attend his court."
6. Cancellation of preliminary order—Sub-section (5).
(a) Cancellation on application of party.
(b) Cancellation on application of third person.
(c) Cancellation suo motu.
(d) Cancellation without any material.
(e) Consequential orders after cancellation.
See also Note 4 (e)—Cancellation of preliminary order.
(f) Costs.
(g) Grounds and materials.
(h) Revival of proceedings.
See also Note 16—Effect of order under the section.
(i) Stage for cancellation.
7. "Consider the effect of such evidence and take such further evidence as he thinks necessary".
8. Continuation of proceedings by or against legal representatives—Sub-section (7).
9. Conversion of proceedings.
10. Costs.
See also Criminal P. C., S. 148.
11. "Crops or other produce subject to speedy and natural decay" —Sub-Section (8).
12. "Declare that such person is entitled to possession" —Sub-Section (6).
See also Note 33—Order under the section.
13. Delegation of Enquiry.
See Note 49—Reference to arbitration and compromise.
14. Dismissal for default.
See Note (5) —"Attend his court" and Note (33)—Nature of proceedings.
15. "Dispute", meaning of.
See also Note 45—Prior decision of Civil, Criminal or Revenue Court.
16. Effect of order under the section.
(a) Disobedience of order.
(b) Effect of order in civil proceedings.
(c) Finality of order.
(d) Previous order under S. 145, inter partes.
(e) Previous order under S. 145, not inter partes.
(f) Remedy of unsuccessful party.
(g) Review of order.
17. Evicted in due course of law.
18. "Fact of actual possession".
(a) Actual possession.

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(b) Continuous possession.
(c) Co-sharers.
(d) Discontinuous possession.
(e) Evidence.
(f) Joint Family.
(g) Large area.
(h) Mines and Minerals.
(i) Notional possession.
(j) Possession of servant, agent or manager.
(k) Possession of tenant.
(l) Possession of trespasser.
(m) Possession under S. 144.
(n) Question of title.

See also Note 47—Question of title.

(o) Stealthy possession.
(p) Symbolical possession.
(q) Usufructuary mortgagee.

19. Finality of preliminary order.

20. Forcible and wrongful dispossession "within two months next before date of order" —Sub-Section 4 proviso (1).

(a) Applicability of proviso (1).
(b) Computation of period.
(c) No preliminary order passed.
(d) Preliminary order beyond two months.

21. "Forcibly and wrongfully" —Meaning of.

22. Foundation of jurisdiction.

See (1) Note 26—"Is satisfied"

(2) Note 30—Likely to cause a breach of the peace and Note 44 — Preliminary order.

23. Fresh proceedings.

See Note 16—Effect of order under the section.

24. "Hear the parties".

25. Inquiry.

26. "Is satisfied".

See also (1) Note 30—Likely to cause a breach of the peace.

(2) Note 44—Preliminary order.
and (3) Note 56—Statement of grounds in the preliminary order.

27. Issue of summons to witnesses—Sub-Section (9).

See also Note 48—"Receive all such evidence as may be produced".

28. Joint Possession.

(a) Both parties in joint possession.
(b) Claim to exclusive possession.
(c) Claim to possession of portion.

29. "Land or water or the boundaries thereof."

See also Note 28—Joint possession
and Note 57—Subject of dispute.

(a) Collection of fees from pilgrims.
(b) Collection of Khutagari.
(c) Collections and offerings in temple.
(d) Crops and trees and produce thereof.
(e) Dispute as to share in joint property.
(f) Dispute relating to mill.

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(g) Dispute relating to right to collect rents and profits.
(h) Easements.
(i) Exhibition of cinema film.
(j) Fishery rights.
(k) Irrigation channel rights.
(l) Live stock.

See Note 29 (n)—Moveables included in immoveable property.

(m) Mines and minerals.
(n) Moveables included in immovable property.
(o) Possession of bund.
(p) Possession of temple.
(q) Public right of way.
(r) Right to lac.
(s) Right to lay warps.
(t) Right to tap trees.
(u) Right to weigh grain in market.
(v) Right to worship and perform puja.
(w) Shares in rents and profits.

30. Likely to cause a breach of the peace.

(a) Evidence.
(b) Jurisdiction, foundation of.
(c) Nature of breach of the peace contemplated.
(d) Recording of fact of existence of likelihood of breach.

See also Note 44—Preliminary order.

31. Limitation for suit.

32. Local inquiry and local inspection.

33. Nature of proceedings.

(a) Applicability of Oaths Act.
(b) Applicability of S. 350.
(c) Dismissal for default.

See also Note 5 "Attend his court."

(d) Transfer of Magistrate.
(e) Transfer under S. 192.
(f) Transfer under S. 526.

34. Non-compliance with provisions of section.

See also Notes 1, 7, 27, 30, 36, 40, 48, 52, 55 and 56.

35. Non-joinder of parties, effect of.

See Note 1—Addition of parties.

36. Order under the section.

(a) Absence of enquiry under sub-section (4).
(b) Absence of final order.
(c) Finding as to existence of likelihood of breach of peace.
(d) Finding on question of possession.
(e) Form and contents.
(f) Improper orders.
(g) Nature of order.
(h) Order in respect of moveable property.
(i) Order in respect of part of subject matter.
(j) Order in respect of property not included in proceeding.
(k) Specification of property.

37. "Or other information."
38. "Parties concerned in such dispute."
39. Pendency of civil suit.
See Note 2—Applicability and scope.
40. Persons bound by the order.
41. Police Report.
42. Possession at the date of preliminary order.
See also Note 28—Joint possession.
and Note 33 (d)—Finding on question of possession.
43. Power to adjourn enquiry.
44. Preliminary order.
See also Note 56—Statement of grounds in the preliminary order.
(a) Preliminary order, necessity of.
(b) Preliminary order, omission to record.
(c) Finding of existence of likelihood of breach of peace.
(d) Omission to record finding of existence of likelihood of breach of peace.
(e) Recording fact of satisfaction.
See also Note 26—"Is satisfied".
(f) Omission to record fact of satisfaction.
(g) Omission to record source of information.
(h) Omission to direct parties to put in written statements.
(i) Misdescription of subject matter.
(j) Delay in passing preliminary order.
45. Prior decision of Civil, Criminal or Revenue Court.
(a) Decision of Civil Court.
(b) Decision of Revenue Court.
(c) Delivery of possession by Civil Court—Subsequent dispossession.
(d) Person in possession not party to suit.
(e) Prior order under S. 145 Criminal P. C.
See Note 16—Effect of order under the section.
(f) Prior order under S. 522 Criminal P. C.
46. Procedure in recording evidence.
47. Question of title.
(a) Irrelevancy of.
(b) When may be considered.
48. "Receive all such evidence as may be produced".
49. Reference to arbitration and compromise.
50. Remedy of aggrieved party.
See Note 16 (f)—Effect of order under the section—Remedy of unsuccessful party.
51. Restoration of possession.
52. Revision.
(a) After amendment of S. 435 in 1923.
(i) Administrative order.
(ii) Appointment of receiver pending revision.
(iii) Delay.
(iv) Finding as to possession based on evidence.

(v) Finding based on misreading evidence or on inadmissible evidence.
(vi) Forum.
(vii) High Court's power to award costs.
(viii) Orders without jurisdiction and illegal orders.
(ix) Pleas in revision.
(x) Procedural irregularity.
(xi) Reference.
(xii) Satisfaction of Magistrate.
(xiii) Scope of revisional jurisdiction.
(b) Before amendment of S. 435 in 1923.
(i) Abatement of revision.
(ii) Consequential orders upon revision.
(iii) Evidence, rejection, admission or misreading of.
(iv) Orders without jurisdiction or illegal orders.
See also Note 52 (b) (vi)—Revisional jurisdiction of High Court.
(v) Procedural irregularity.
(vi) Revisional jurisdiction of High Court.
(vii) Satisfaction of magistrate.
(c) Letters Patent appeal from orders in revision.
53. Revival of proceedings.
See (1) Note 6 (h)—Revival of proceedings.
and (2) Note 16—Effect of order under the section.
54. Sections 145, 144 and 107 compared.
(a) Sections 145 and 107.
(b) Sections 145 and 144.
55. Service and publication of preliminary order—Sub-Section (3).
(a) Omission to serve or publish the order—Cases where proceedings were held vitiated.
(b) Omission to serve or publish the order—Cases where proceedings were held not vitiated.
56. Statement of grounds in the preliminary order.
(a) Omission to state grounds, effect of—Cases where omission held affected jurisdiction.
(b) Omission to state grounds, effect of—Cases where omission held did not affect jurisdiction.
57. Subject of dispute.
See also (1) Note 28—Joint possession.
and (2) Note 29 "Land or water or the boundaries thereof".
(a) Description of subject matter.
(b) Dispute as to portion.
(c) Joint inquiry.
(d) Moveable property.
(e) Undivided share.
58. Transfer of proceedings.
See Note 33—Nature of proceedings.
59. Who can take action.

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60. "Within the local limits of his jurisdiction".

61. Written statement.

1. Addition of parties.

——Order under S. 145—Order is not bad merely because all interested persons are not made parties —Order is valid so far as parties actually before Magistrate are concerned. (Mitter and Sen, JJ.) Bholanath Dhar v. Gour Gopal.

AIR 1953 Cal 777 : 58 CWN 11 : 1953 Cr LJ 1782.

——"Parties concerned in such dispute"—Addition of parties during proceedings.

An enquiry under S. 145 is restricted to an enquiry as to actual physical possession irrespective of the question of right to possession.

Where the enquiry under S. 145 had reached the stage when the evidence of the witnesses of one party had already been taken and some of the witnesses of the second party had also been examined, in these circumstances a third party cannot, as a matter of right, claim to be added as a party to the enquiry, particularly when such third party or his predecessor-in-interest do not claim to have been in possession at the relevant date. (Das, J.) Purnendu Narayan v. Akhouri Jagannath Prasad.

AIR 1952 Pat 270 : 1952 AWR Sup 107 : 1952 Cr LJ 942.

——Parties.

In the original petition the opposite party was not specifically named, but in the police report he was named as the only rival claimant and upon that the Magistrate issued notice upon him and directed him to file written statement. Thereupon he actually appeared before the Magistrate and filed his written statement and also took active part in the cross-examination of the first party's witnesses:

'Held' that in such circumstances, it was not open to any one—far less to the opposite party himself —to contend that he was not legally made a party to the proceedings in question. (P. N. Mookerji, J.) Meher Ali v. Tulsi Charan Chatterji.

AIR 1952 Cal 204 : 1952 Cr LJ 571.

——Amendment of proceedings — Addition of parties.

Where proceedings under S. 145 are pending for several years after the attachment of the property in dispute and considerable changes have taken place in the constitution of the parties the Court is, on an application by a party, entitled to amend the previous proceeding in view of the new circumstances and there is nothing illegal in it. (Varma, J.) Bibi Soghra v. Emperor.

AIR 1948 Pat 77 : 13 BR 390 : 229 IC 536 : 48 Cr LJ 440.

——Question of misjoinder or non-joinder of parties does not affect Magistrate's jurisdiction.

CRIMINAL P. C. (V of 1898), S. 145 — 1. Addition of parties

Two essential conditions for the foundation of jurisdiction of the Magistrate under S. 145 are that there should be a dispute likely to cause a breach of peace and that the dispute should concern land. Questions of whether A ought to have been added as being a person likely to be affected by the proceeding, or B omitted as not being concerned in it, or whether C was added at too late a stage, and such like, are questions of procedure by which the jurisdiction of the Magistrate is not affected. (Manohar Lall and Dass, JJ.) Bindhyachal Prasad v. Madho Singh.

AIR 1946 Pat 330 : 12 BR 290 : 25 Pat 19 : 222 IC 611 : 47 Cr LJ 328.

——Proceedings, nature of—Necessary parties.

The inquiry under S. 145, Criminal P. C., is in its nature a summary one and a Magistrate can be expected to wait till every possible interest is represented in the inquiry. If the parties actually in dispute are impleaded, failure to implead those who may be interested in the subject-matter but are not actually claiming a present right to possession does not vitiate the proceedings. (Misra, J.) Mahadeo Prasad v. Ram Saran.

AIR 1945 Oudh 12 : 1944 OWN (C C) 287 : 1944 AWR (C C) 196 : 220 IC 418 : 46 Cr LJ 680.

——All parties claiming right, if should be made parties to proceedings—Dispute between rival lessees—Co-sharers, if necessary parties.

The enquiry under S. 145, Criminal P. C., is confined to the fact of actual possession irrespective of the merits of the claims of the parties concerned. A claim, therefore, merely to a right to possession, as distinguished from a claim to be in possession, would be outside the scope of the enquiry. It is, therefore, not necessary that all parties interested in or claiming a right to the property in dispute or entitled to it should be made parties to the proceedings.

Consequently, where the dispute is between two rival lessees claiming to be in actual possession and there is nothing to show that there was any other party who also claimed to be in actual possession and notices under S. 145 are issued to them alone and not to the co-sharers, there is no defect in the proceeding. (Ganga Nath, J.) Emperor v. Bhuneshar Prasad.

AIR 1936 All 531 : (1936) ALJ 796 : 9 RA 119 : 1936 AWR (H C) 626 : 164 IC 180 : 37 Cr LJ 886.

——No notice issued to a person to produce evidence—Nor such person producing any evidence—At the stage of arguments such person applying for being impleaded as a party— Application should be refused. (Nanavutty, J.) Jagdish Prasad Singh v. Tej Bhan Singh.

1936 OWN (C C) 147.

——Ss. 145, 537— Dispute between two persons — Complaint by agent of one of them— Notice to

CRIMINAL P. C. (V of 1898), S. 145—1. Addition of parties

agent of other — Masters not called upon to file written statements— Case proceeding between agents — Magistrate ordering possession of property to be given from one master to another—Order, if valid—Irregularity, if cured by S. 537.

Where from a complaint of the agent of a person and the Police report, it is found that the real dispute is between the master of the complainant and another person, but the Court issues notice to the agent of the latter and the case proceeds between the agents, and without notices being sent to the masters to file their written statements, the Magistrate attaches the property in possession of the master of the opposite party and orders possession to be given to the master of the complainant, the order is invalid and the proceedings should be quashed. Section 537, Criminal P. C., does not cure the omission to implead the master of the opposite party. (Niamat-Ullah, J.) Peare Lal v. Emperor.

AIR 1934 All 853 : (1934) ALJ 650 : 7 RA 351 : 4 AWR (H C) 896 : 152 IC 500 : 36 Cr LJ 114.

——The question of misjoinder of parties does not ordinarily affect jurisdiction. It is a question of procedure by which jurisdiction is not affected, whether a party has been wrongly included or excluded. (Macpherson, J.) Nandan Singh v. Siaram Singh.

AIR 1926 Pat 67 : 7 PLT 156 : 89 IC 151 : 26 Cr LJ 1287.

——Per Newbould, J.—The omission to add a party in a proceeding under S. 145 of the Code is not an error of jurisdiction, 30 Cal. 155, Foll. There was no irregularity resulting in such material prejudice as would justify the Court's interference. Per Shamsul Huda, J.—Where the refusal of the Magistrate to add a party on his application to the proceeding has resulted in a serious failure of justice the Court will set aside the order under S. 145. There was such failure of justice in the case. (Newbould and Huda, JJ.) Motiram Bewa v. Merjan Sardar.

AIR 1920 Cal 417 : 47 Cal 438 : 21 Cr LJ 25.

——Parties.

Party may be added provided he was concerned originally in the dispute which was the foundation of the proceeding and there is no necessity for a fresh proceeding. And if a party is added before the enquiry begins, there is no irregularity; whether there was then an apprehension of a breach of the peace is a matter chiefly for the exercise of the Magistrate's discretion. For a person to be concerned in a dispute relating to the land, he need not be actually present near the land or have a notice of the proceeding when started. (Chitty and Walmsley, JJ.) Manmotha Nath v. Ganga Giri.

AIR 1917 Cal 173 : 20 CWN 978 : 36 IC 129 : 17 Cr LJ 449.

——Person claiming to be interested as tenant and applying to be made party must be heard.

CRIMINAL P. C. (V of 1898), S. 145—1. Addition of parties

Where a person who has not been made a party to the proceedings applies to be added as a party claiming to be interested in the land in dispute as a tenant should be heard by virtue of Sub-S. (5) where there is nothing to show that what he says is not the case. Such a person must also be allowed to show that no dispute likely to cause a breach of the peace exists or has existed. (Stephen and Carnduff, JJ.) Harnam Mandal v. Mohim Chandra Pramanik.

6 Ind Cas 545 : 11 CLJ 414 : 37 Cal 285 : 14 CWN 708 : 11 Cr LJ 371.

——Ss. 145, 439, 537—Parties.

Where the Magistrate made the manager a party to the proceedings under S. 145 instead of his employer, the Zamindar, it is a mere irregularity, or at most an error of law which does not affect his jurisdiction. (Pratt and Handley, JJ.) Bholanath Singh v. Wood.

32 Cal 287 : 2 Cr LJ 202.

2. Applicability and scope.

(a) Cases arising under Bengal Alluvial Lands Act.
(b) Object of.
(c) Pendency of civil proceedings.

2. Applicability and scope.

——Continuation of proceedings.

Proceedings under S. 145 should not be readily continued in the following cases viz., where there is ample time for the obtaining of a civil remedy, criminal action is injustice; where, in the circumstances of the case, proceedings under S. 107 have become more appropriate; where the object is to drive the other party to a suit as a plaintiff with responsibility for a burden of proof which otherwise would not be his. Where both the parties had submitted their difference to an arbitrator and an award had been passed and one of the parties resiled from it, the proper thing is to go to the civil Court and not ask to be relegated to a previous state of things simply to jockey for a favourable position in the criminal Court and compel the other party to file a suit. (Ramaswami, J.) Nandipi Nagi Reddy v. Vadde Venkatappa.

AIR 1953 Mad 436 : 1952 MWN Cr 91 : 1952 MWN 387 : 1952-2 Mad LJ 163 : 1953 Cr LJ 825.

——Inquiry into possession under S. 145 should precede action under S. 146.

See Criminal P. C. (1898), S. 146.

ILR (1953) 5 Assam 409.

——Scope.

See ibid, S. 144.

AIR 1952 Cal 200 : 1952 Cr LJ 566.

——S. 145 (1)—Dispute relating to right to possess.

Section 145 can be invoked in cases where the contending parties are not in actual possession at the time of the preliminary order but have bona fide rights to succeed to the property and there is a serious danger of a breach of the peace if action under S. 145 were not taken. (Muhammad Munir

CRIMINAL P. C. (V of 1898), S. 145 — 2. Applicability and scope

and Muhammad Jan, JJ.) Fate Muhammad Khan Tiwana v. The Crown.

AIR 1949 Lah 273 : Pak Cas 1950 Lah 102 : Pak LR (1949) Lah 466 : 51 Cr LJ 55.

——Art. 12 of covenant entered into by Ruler of Rajkot—Immunity of member of family of Ruler from proceedings under S. 145, Cr. P. C.

See Constitution of India, Art. 363.

AIR 1950 Sau 7.

——Object of.

The Magistrates must guard themselves against the provisions of S. 145 being abused by the section being used with the object of getting possession of the property and driving the other side to figure as plaintiff and to prove his title. (Malik, C. J.) Gajadhar Singh v. Chunni.

AIR 1949 All 621 : 1949 AWRHC 442 (1) : 1949 All Cr Cas 106 : 50 Cr LJ 967.

——Dispute regarding right of way—Section applicable is S. 147 and not S. 145—Mode of enquiry is same—Notice issued under S. 145—Preliminary order passed under S. 145—Proceedings under S. 147 are not invalidated.

See ibid, S. 147.

AIR 1949 Nag 275 : 50 Cr LJ 693.

——The word "shall" in S. 145 is mandatory and when there is a dispute regarding immovable property likely to cause a breach of peace a duty is cast on the Magistrate to take action under S. 145. Section 145 would apply even when a person having title and whose interference with the possession of a stranger cannot be said to be wrongful is involved in a dispute which may lead to a breach of peace. (Rege, J.) Pannalal v. Shambhusa.

('49) **1 Madh BLR 478.**

——There are two steps in S. 145, Cr. P. C., which are not always kept clearly separate by Magistrates. In the first place a Magistrate has to be satisfied that there is a dispute likely to cause a breach of the peace. Secondly, when a Magistrate has come to that conclusion, he has to decide which party was in possession and to hand over possession to that party. (Plowden, J.) Nurul Hassan v. Majidan.

AIR 1944 All 210 : 17 RA 64 : 1944 AWR (H C) 114 : ILR (1944) All 285 : (1944) ALJ 190 : 215 IC 45 : 45 Cr LJ 769.

——Where the substance of information received under S. 110, Criminal P. C., as set out under S. 112 relates to disputes concerning land, special provisions of S. 145 apply excluding the general provisions of S. 110. (Davis, J. C. and Tyabji, J.) Emperor v. Alisher Dost Mohammad.

AIR 1939 Sind 261 : 12 RS 94 : 184 IC 189 (2) : 40 Cr LJ 887 (2).

——Applicability of S. 203.

S. 203 has nothing to do with proceedings under S. 145 and where an application is made under S. 145 the magistrate ought to proceed with the

CRIMINAL P. C. (V of 1898), S. 145 — 2. Applicability and scope

case in accordance with the provisions of S. 145. The only case in which a magistrate can refuse to take action under S. 145 is when he is not satisfied that there is a danger of a breach of the peace. (Zia-Ul Hasan, J.) Emperor v. Subhan.

AIR 1939 Oudh 15 : 40 Cr LJ 33.

——S. 145 covers cases of dispossession of tenants by landlords —Question of title does not arise. Magistrate is concerned with question of possession only. (Jai Lal, J.) Muhammad Ali v. Ladha.

AIR 1938 Lah 122 : 39 Cr LJ 297.

——Cases, besides the one under S. 145, relating to same subject-matter pending—S. 145 case must be finished first.

The idea of S. 145 is that it is a short and summary manner of awarding possession until other cases connected with the subject-matter of the proceedings under S. 145 are decided so that there may not be breach of the peace. AIR 1923 Rang. 211, Ref. (Baguley, J.) Ma Myain Mya v. Maung Po Htaik.

AIR 1928 Rang. 314 : 114 IC 677 : 30 Cr LJ 344.

——The Magistrate is only justified in applying S. 145 when he anticipates that unless he interferes there will be breach of the peace. He may so anticipate by reason of general information or by a particular representation by a person whose possession is likely to be forcibly disturbed; then such person is in a position similar to a person who makes a complaint. But such a person is not a complainant and his petition is not a complaint. (Kennedy, J. C. and DeSouza, A. J. C.) Moolyamal Tapandas v. Ali Mahomed Jadow.

AIR 1926 Sind 85 : 89 IC 309 : 18 SLR 278 : 26 Cr LJ 1333.

——When there is ample time for the obtaining of a civil remedy criminal action is not justified. (Dalal, J. C.) Chote Lal v. Emperor.

AIR 1924 Oudh 341 : 76 IC 691 : 25 Cr LJ 227.

——One party already in possession— Other party aggressor — Action under Chapter 8 instead of under this section may be taken. (Lucas, Crouch, and Pratt, J. Cs.) Balmukand Jagannath v. Crown.

1 SLR 50 Cr : 8 Cr LJ 170.

——Discretion of Magistrate under the section.

(Per Lucas J. C. and Crouch A. J. C.; Pratt, A. J. C. Contra) In enacting S. 145 the Legislature clearly intended to leave it to the discretion of the Magistrate to decide whether the conditions precedent to the exercise of his jurisdiction prescribed in the section had arisen or not. Where, however, he came to the decision that such conditions were present he had no option of refusing to exercise his jurisdiction. The word "shall" in the section could not be interpreted as giving the Magistrate discretion to refuse to act in such a case. (Lucas, Crouch, Pratt, J. Cs.) Balmukand Jagannath v. Emperor.

1 SLR 50 Cr : 8 Cr L J 170.

CRIMINAL P. C. (V of 1898), S. 145 — 2. Applicability and scope

——Magistrates should use with great discretion their powers under section 145 lest a party, by obtaining a summary order in his favour, put his adversary at a disadvantage in litigation by securing for himself the better position as defendant in the civil court. (Rendall, J.) Virpa Ambaram Gopalji v. Desai Sadashankar Mainshankar.

16 KLR 212 : 4 Cr LJ 380.

2. Applicability and scope.

(a) Cases arising under Bengal Alluvial Lands Act.

——S. 10—Effect of S. 10 of Bengal Alluvial Lands Act is to stay earlier proceedings under S. 145.

Some char lands became the subject-matter of proceedings under S. 145, and at the time when proceedings were initiated an attachment order was made against the lands. Various steps were taken in those proceedings and subsequently the Magistrate after reviewing the situation passed an order directing that the lands be released from attachment under S. 145 and decided to replace those proceedings with others under the Bengal Alluvial Lands Act, 1920. It was contended that S. 10 of that Act was intended to apply to proceedings under S. 145 so far as their institution or carrying on was concerned and not to the attachment order made under that section and that once an attachment was made S. 10 conferred no right on the Collector to make a further attachment under that Act.

Held, that, if the contention were sound, it would result in nullifying the provisions of the Bengal Alluvial Lands Act of 1920. The provisions of S. 10 were wide enough to apply to all proceedings, including an attachment that may have been had under S. 145. The effect of S. 10, Bengal Alluvial Lands Act, would, therefore, be to stay the earlier proceedings under S. 145, Cr. P. C. 13 C. W. N. 125; AIR 1921 Cal. 631, Dist. (Pearson and Mullick, JJ.) Digendra Behari Roy v. Janaki Nath Roy.

AIR 1929 Cal 646 : 125 IC 737 : 33 CWN 1115 : 1929 Cr C 326 : 57 Cal 607 : 31 Cr LJ 911.

2. Applicability and scope.

(b) Object of.

——Proceedings should be conducted and concluded with least possible delay. (C. B. Nagarkar, J. C.) Hansa Lachman Jat v. Ranjit Ghisa Jat.

1948 AMLJ 19.

——The object of the section is to prevent a breach of the peace, and not to prevent a party, who has been forcibly dispossessed, from being obliged to have recourse to a civil Court. AIR 1931 Nag. 38, Foll. (Sharma and Bapna, JJ.) Bohlia v. Gobind.

1946 JLR 420.

——Section 145 and certain other sections of a like nature have been incorporated in the Criminal P. C., with the object of enabling the Criminal Courts to take suitable action in disputes relating to property to prevent breaches of the peace. But the jurisdiction thus conferred is a very limited one and is carefully restricted to a prevention of the apprehended breach of the peace. (Verma, J.) Mohd. Ishaq v. Emperor.

AIR 1945 All 60 : 46 Cr LJ 504.

——The fact that breach of the peace is not imminent and there is sufficient time to go to the Civil Court is no bar to the initiation of proceedings under Chap. XII, Criminal P. C. On the other hand, the provisions of Chap. XII are intended to provide a speedy remedy in cases of disputes with which that Chapter deals in order that the matter may be settled temporarily while more lengthy civil proceedings take place. (Bennet, J.) Todar Mal v. Emperor.

AIR 1931 All 14 : 32 Cr LJ 309.

——The provisions of S. 145 are directed to enable a Magistrate to pass orders as to retention of possession with the object of preventing a breach of the peace. These orders have no effect as to title, but a special exception is made in favour of persons who have been very recently dispossessed. (Stuart, C. J.) Emperor v. Baijnath.

AIR 1929 Oudh 526 : 5 Luck 440 : IR 1930 Oudh 219 : 124 IC 363 : 6 OWN 957 : 1929 Cr C 641 : 31 Cr LJ 678.

——The object of S. 145 is to finally terminate the dispute between the parties so far as the Criminal Court is concerned so as to effectively put a stop to any breach of the peace. It is with this object that the decision of the Magistrate under S. 145 is declared to be final and conclusive until it is set aside by a competent Civil Court which determines the right of the parties. (Jwala Prasad, J.) Abdul Shakur v. Abu Sayeed.

AIR 1925 Pat 593 : 86 IC 806 : 6 PLT 710 : 26 Cr LJ 870.

——It is not one of the objects of S. 145 to protect or maintain anybody's possession. The sole object of the proceeding is to prevent an imminent breach of the peace and the decision in regard to it must be made at once. (Hallifax, A. J. C.) Emperor v. Mt. Fhutanja.

AIR 1925 Nag 142 : 81 IC 933 : 25 Cr LJ 1109.

——Object of.

The object of S. 145 is to prevent a breach of the peace by a summary decision as to the possession of the contending parties leaving them to decide their title and right to possession in a competent Civil Court where naturally the proceeding has to be a protracted one. (Jwala Prasad and Coutts, JJ.) Moti Sing v. Dhanukdhari.

AIR 1923 P 53 : 73 IC 339 : 24 Cr LJ 595.

——Object of — Dispute as to management of property—Jurisdiction

The object of the section is limited strictly to the prevention of violent self-help even by a true owner.

CRIMINAL P. C. (V of 1898), S. 145 — 2. Applicability and scope—(b) Object of

The questions to be decided are (1) whether the dispute is a dispute concerning land or water or the boundaries thereof, within the meaning of the section, (2) whether the acts found to have been exercised are such as to justify a finding of possession. The mere fact, that the word 'management' is used to describe the acts of possession would not exclude the jurisdiction of the Magistrate. (Chapman, J.) Ghasi Ram v. Amrita Mal.

AIR 1917 Pat 606 : 2 Pat LW 94 : 41 IC 826 : (1917) Pat HCC 350 : 18 Cr LJ 858.

——Object of.

The scope of S. 145 is merely a determination of actual possession for preventing breach of the peace pending a decision on the merits by a Civil Suit and the section does not provide for eviction by a Magistrate or for a decision by him of any claims to a right to hold possession or to reap crops. (Chevis, J.) Kaku v. Hernaman.

AIR 1917 Lah 171 : 28 PWR (Cr) 1917 : 40 IC 308 : 40 PR (Cr) 1917 : 18 Cr LJ 660.

——The object of the section is merely to prevent a breach of the peace by maintaining one or other of the parties in possession. (Richards, J.) Debi Prasad v. Sheodat.

4 ALJ 705 : 30 All 41 : 1907 AWN 265 : 6 Cr LJ 352.

——Scope and object of.

S. 145 was intended to provide a speedy remedy for the prevention of the breaches of the peace arising out of disputes relating to immoveable property, without any reference to the merits of the respective claims of the disputing parties to a right to possess the subject of dispute. The question of possession, moreover, has to be determined with reference to a specified point of time, namely, the date of the initial order, or, in the case of forcible dispossession, a date within 2 months next preceding such order. The Legislature did not contemplate an elaborate and protracted investigation. The whole object might obviously be defeated, if the Court could be compelled to summon and re-sommon witnesses at the choice of the parties. (Rampini and Mookerjee, JJ.) Tarapada Biswas v. Nurul Huq.

32 C 1093 : 2 CLJ 280 : 2 Cr LJ 679.

2. Applicability and scope.

(c) Pendency of civil proceedings.

——Pendency of proceedings under Orissa Tenants Protection Act— Effect of —(Tenancy Laws — Orissa Tenants Protection Act (3 of 1948), S. 7 (1) (a)).

Dispute relating to paddy fields between persons who claim to be bhag chasis on one hand and landlords on the other as regards their respective right to possession—Dispute already taken up before Revenue Court which is the competent Court to decide such dispute under S. 7 (1) (a), Orissa Tenants Protection Act— Subsequent order under S. 145 declaring opposite party in possession — Revision —Held that in the circumstances order under S. 145 should not be allowed to stand as such order will be subject to subsequent decision of Revenue Court. (Narasimham, J.) Panua Bhoi v. Mahanta Jagannath Ramanuj Das.

AIR 1953 Orissa 312 : 19 Cut LT 226 : 1953 Cr LJ 1705.

——Ss. 145 and 344— Proceedings under S. 145— Stay of, pending civil suit— (Travancore Criminal P. C., S. 143.)

When after a civil suit is filed the plaintiff moves the criminal Court to start proceeding under S. 145, the proper course to adopt would be to move the civil Court itself for appropriate relief even if the disturbance of possession of property occurred after the filing of the suit. It is therefore proper in such a case to stay the criminal proceedings till the disposal of the suit. (Joseph Vithayathil, J.) Sakaria Mathai v. Narayanan Nair.

AIR 1952 Trav-Co 207 : ILR (1951) TC 269 : 1952 KLT 39 : 1952 Cr LJ 939.

——The provisions in S. 171, Companies Act, that when a winding up order has been made no suit or other legal proceeding shall be proceeded with or commenced against the company except by leave of the Court is not so meant to override an express enactment in S. 145, Criminal P. C., by which a Magistrate, if satisfied that a dispute likely to cause a breach of the peace exists, is bound to call on the parties to attend his Court and put in their claims as regards actual possession (Pearson and Patterson, JJ.) Mukherjee v. Krishna Dassi.

AIR 1933 Cal 433 (2) : Ind Rul (1933) Cal 484 : 37 CWN 932 : 143 IC 795 : 34 Cr LJ 640 (2).

——Where a civil suit is pending for the determination of the rights of the parties in certain property, proceedings under S. 144 should not be started; if immediate steps are necessary to avert a serious breach of the peace the parties may be bound down under S. 107. (N. R. Chatterjee and Cuming, JJ.) Ali Mahomed v. Fakkiruddi.

AIR 1920 Cal 708 : 24 CWN 1039 : 32 CLJ 255 : 59 IC 643 : 22 Cr LJ 131.

——Proceedings under, nature of.

A Civil Court has no right to issue an injunction which would have the effect of staying proceedings in a Criminal Court. But proceedings under S. 145, cannot be said to be criminal proceedings within the meaning of that principle, nor can it be said that a Civil Court's action can possibly be fettered by any action, which one of the parties to the suit may choose to take before the Magistrate under the provisions of that section. (Chitty and Vincent, JJ.) Begam v. Seth Dooli Chand.

2 Ind Cas 266 (Cal).

——Suit under S. 9, Specific Relief Act, pending.

A Magistrate has jurisdiction to proceed under S. 145 with regard to properties in respect of which

CRIMINAL P. C. (V of 1898), S. 145 — 2. Applicability and scope—(c) Pending of civil proceedings suit under S. 9 Specific Relief Act is pending. (Sharfuddin and Coxe, JJ.) Kishori Lal Roy Choudhury v. Srinath Roy.

13 CWN 530 : 36 C 370 : 1 Ind Cas 817 : 9 Cr LJ 399.

3. Appointment of receiver.

See Note 4 (b) Appointment of receiver and Criminal P. C. S. 146.

4. Attachment.

See also, Criminal P. C. S. 146.

(a) Appointment of custodian.
(b) Appointment of receiver.
(c) Attachment of crops and trees.
(d) Attachment of moveables.
(e) Cancellation of preliminary order.

See also Note 6 (e)—Consequential orders after cancellation.

(f) Effect of attachment.
(g) Mode of attachment
(h) Other temporary order.

——4. Attachment.

See also Criminal P. C., S. 146.

——Attachment pending decision.

Even when a preliminary order under S. 145, Cr. P. C., is passed the property should not be attached unless there is an emergency. The preliminary order is passed after the Magistrate makes up his mind, that there is a dispute about the immovable property likely to cause breach of the peace; for attaching the property pending decision the Magistrate should have further reasons, namely that there is an emergency, and unless the property is attached there is likelihood of some serious riot or similar acts of violence. If the police want it, they should satisfy the Magistrate on this. Attachment pending decision seriously affects the rights of citizens; and also gives rise to unnecessary and inconvenient controversies. So, it has to be resorted to only exceptionally. (Krishnan, J. C.) Ram Kripal v. Ganesh Prasad.

AIR 1952 VP 81 : 1953 Cr LJ 66.

——S. 145 (4) Second Proviso—Attachment in case of emergency— Emergency is for Magistrate to decide— Order without any evidence is illegal — (Criminal P. C. (1898), S. 439).

If on the basis of some material, a Magistrate has come to the decision about the existence of the state of emergency then the law gives him very wide discretion and it would not be proper for a revisional Court to interfere only because another Court can arrive at a different finding on the same material. (Magistrate's order of attachment held was justified). Case law referred. (J. S. Ranawat and D. S. Dave, JJ.) Tej Singh v. Ramla.

1953 Raj LW 373.

——S. 145 (4)—Attachment under S. 145 (4), Proviso and one under Civil Procedure Code, distinction.

CRIMINAL P. C. (V of 1898), S. 145—4. Attachment

The purpose of a civil Court attachment is quite different from that of an attachment under S. 145 (4), Criminal P. C. Attachment of immovable property under the Civil P. C., is a preliminary step to be taken to make the property available for sale for satisfaction of the decree. The purpose of the attachment is to prohibit the judgment debtor from transferring or charging the property in any way. Such purpose is wholly foreign to the scope of a proceeding under S. 145, Criminal P. C. The Magistrate, acting under S. 145, has nothing to do with the title to the property and is concerned with maintaining actual possession with a view to prevent breach of peace. (Manohar Lall and Chatterji, JJ.) Nandkishore Prasad v. Radhakishun.

AIR 1943 Pat 124 : 21 Pat 743 : 9 BR 231 : 15 RP 292 : 205 IC 429 : 44 Cr LJ 414.

——Dispute as to immovable property— Attachment by Magistrate—Interference in revision.

Where a Magistrate considers a case to be one of emergency and orders attachment, the matter being one within his discretion, the action taken by him for maintenance of peace cannot be lightly interfered with. (Bhide, J.) Prem Kaur v. Banarsi Das.

AIR 1933 Lah 409 : 34 PLR 368 : Ind Rul (1933) Lah 177 : 14 Lah 615 : 142 IC 207 : 34 Cr LJ 342.

——Power of Magistrate to attach disputed land is limited.

The jurisdiction of a Magistrate to deal with disputes concerning land is strictly limited. A very exceptional jurisdiction in that regard has been conferred upon him by S. 145. Power under S. 145 is given to the Magistrate for the purpose of preserving the peace and it is only for that purpose that he may, where a breach of the peace is imminent, attach disputed property. (Fforde, J.) Atma Singh v. Harnam Singh.

AIR 1926 Lah 205 : 7 Lah 134 : 95 IC 281 : 8 LLJ 358 : 27 PLR 341 : 27 Cr LJ 761.

——Breach of peace.

When there is real danger to a breach of the peace in dispute relating to property proceedings under S. 145 should be instituted by attaching the property in dispute. (Jwala Prasad, J.) Ratanchand v. Mohan Lal.

AIR 1922 Pat 228.

——Order attaching property before enquiry regarding possession. Where an order of attachment was passed when in fact no enquiry had been even commenced regarding possession and it contained in itself everything required to satisfy the requirements of sub-s (1) of S. 145.

Held that viewed as an order under sub-s (4) of S. 145 it was a perfectly legal order. (Aiyling J.) Subhadramma v. Satyam Swami.

8 MLT 314 : 7 Ind Cas 895 : 1910 MWN 811 : 11 Cr LJ 536.

CRIMINAL P. C. (V of 1898), S. 145—4. Attachment

——S. 145 (4) second proviso—Attachment in the beginning.

S. 145 (4), second proviso allows an attachment of the property in the beginning. (Mr. Justice H. V. Nanjundayya offg. Chief Judge and Justice K. S. Chandrasekhara Aiyar offg. Judge) Venkatasubbiah Setty v. Hucha Setty.

12 MCCR 93 : 9 Cr LJ 335.

4. Attachment.

(a) Appointment of custodian.

——S. 145 (4)—Receiver under—Powers of—Power to lease.

A receiver or officer appointed under S. 145 (4) has no power to lease the land attached pending disposal of the proceedings under S. 145. But it is open to him to take security from those who are willing to cultivate the land. Whoever cultivates the land after giving such security does so under orders of Court and will abide by the orders of Court. (Somasundaram, J,) Ramiah v. Nachiappa Chettiar.

AIR 1951 Mad 764 : 1951 MWN Cr 59 (2) : 1951 MWN 231 (2) : 1951-2 MLJ 30 : 52 Cr LJ 705.

——Proceedings under—Property in dispute made over to Supurdar— Failure of Supurdar to hand over property to party entitled —Order by Magistrate under O. 40, R. 4, Civil P. C., attaching supurdar's property is illegal in the absence of provision applying Civil P. C., to acts done under Criminal P. C. (Raghubar Dayal, J.) Ajgoot Singh v. Rex.

AIR 1950 All 490 : 1950 AWR 485 : 1950 All Cr C 162 : 51 Cr LJ 1314.

——Person appointed by Magistrate to take charge of property, has no powers of a Receiver.

Although under S. 145 a Magistrate has in cases of emergency the power to attach the subject in dispute, he has no power at the stage to appoint a Receiver. (8 MLT 314 and 3 PLJ 147, Foll.) If in order to prevent a breach of the peace it is necessary for the Magistrate to take possession of the attached property and manage it durnig the pendency of the proceedings, it is quite competent to him in his administrative capacity or in exercise of his inherent jurisdiction to appoint some person to manage the property on his behalf and subject to his control and supervision, but the person so appointed is in no sense a receiver but merely a servant of the Magistrate, e.g., he has no powers which a receiver appointed under S. 145 (2) can exercise. (Wadegaonkar, A. J. C.) Dashrath v. Tarachand.

AIR 1925 Nag 297 : 89 IC 514 : 8 NLJ 69 : 21 NLR 191 : 26 Cr LJ 1378.

4. Attachment.—

(b) Appointment of Receiver.

See also Criminal P. C., S. 143.

——Receiver placed in possession — Receiver auctioning lease-hold right — Person already in possession purchasing same—Fact that he becomes receiver's lessee is no bar to suit for ejectment against him by other party— Only execution of decree would be postponed till expiry of receiver's lease.

B who was the lessee of A did not deliver possession after the expiry of his lease. There was a dispute regarding the right to possession. Proceedings under S. 145 Criminal P. C., were accordingly started. A receiver was appointed and placed in possession of the property. The receiver auctioned the lease-hold right for a year and B purchased the same:

Held that the fact that B was a lessee of the receiver did not operate as bar to A's suit for ejectment against B as his capacity as lessee from the receiver was different from his capacity as a defendant in the suit. The only effect would be to postpone A's right of possession till the end of the receiver's lease, when A would be entitled to execute his decree. In fact the correct procedure in such a case would be for B to hand back possession to the receiver and the receiver then handing it over to A as he succeeded in the suit. (Bose, J.) Pursaram v. Deorao.

AIR 1947 Nag 188 : ILR (1946) Nag 991 : 1946 NLJ 602 : 229 IC 138.

——S. 145 (4)—Proceedings under S. 145 are for speedy remedy— Such purpose is not served by appointment of a Receiver.

In view of the express provision in S. 146, Criminal P. C., if it were intended that a Magistrate should have power to appoint a Receiver under Sub-Cl. (4) of S. 145, it would have been so stated and the absence of such special provision precludes the Magistrate from appointing a Receiver under S. 145 (4). The Magistrate can only attach the property but it is not stated in the Code as to how the attachment is to be effected. If the land in dispute is land paying revenue to Govt. and analogy of S. 88 were to be followed, the Magistrate must attach it through the Collector. The word "attach" merely means to bring under the control of the Court, and the Magistrate is entitled to effect that object in any way which is within his power. Certainly, the appointment of Receiver with the powers of a Receiver under the Civil P. C., is not one of those ways, because unless that power is expressly given, a Magistrate cannot exercise it. It is not advisable to employ the term "Receiver" owing to the possibilities of misunderstanding that may arise, yet it is clear that if the Magistrate's attachment is to be effected, he must put some person into possession of the property, who will have authority to maintain his possession. The person put in possession of the property can be awarded the legitimate costs incurred by him for managing the property.

An additional reason against the appointment of such a Receiver under Sub-Cl. (4) of S. 145, Criminal P. C., is this that the proceedings under

CRIMINAL P. C. (V of 1898), S. 145—4. Attachment —(b) Appointment of Receiver

S. 145 are intended to be carried through without delay and the time during which the subject of the dispute needs to be under attachment is so short as certainly not to justify the appointment of a Receiver having the powers of a Receiver under the Civil P. C. (Mackney, J.) San Maung U v. Maung Lu Gale.

AIR 1938 Rang 83 : 10 R Rang 451 : 174 IC 958 : 39 Cr LJ 484.

——Receiver.

There is no provision in Criminal P. C. for the appointment of a Receiver during pendency of a dispute under S. 145, Criminal P. C. (Burn, J.) Ramakrishnam Pillai v. S. Narayana Chettiar.

1933 MWN 917.

——Section 146 (2) cannot be so read as to make its provisions apply to attachment under S. 145 (4) and the appointment of receiver under S. 145 (4) is illegal. (1910) MWN 821 and 3 PLJ 147, Foll.; 91 PR (1912), Not foll. (Dalip Singh, J.) Diwan Chand v. Emperor.

AIR 1929 Lah 223 : 115 IC 29 : 10 Lah 800 : 30 PLR 23 : 30 Cr LJ 411.

——High Court has no power to appoint receiver pending disposal of petition to revise order under S. 145. (Devadoss and Wallace, JJ.) Marudayya Thevar v. Shanmuga Sundara Thevar.

AIR 1926 Mad 139 : 49 MLJ 593 : 27 Cr LJ 126.

——Receiver, appointment of.

When a Magistrate takes proceeding under S. 145 of the Cr. P. Code the object of the law is that he shall confirm the party in actual possession. He is certainly not competent to dispossess such a party by appointing a receiver. (Mullick and Prasad, JJ.) Mewa Lal v. Emperor.

AIR 1918 Pat 197 : (1917) Pat HCC 363 : 3 Pat LJ 147 : 44 IC 41 : 4 Pat LW 359 : 19 Cr LJ 249.

——Attachment made under S. 145 (4)—Appointment of receiver—Legality.

The only section which authorises the appointment of receiver is 146 (2). Section 146 contemplates attachment in certain cases after conclusion of the possession enquiry and Sub-S. (2) of the section is not intended to apply to attachments under S. 145 also. Therefore where an order of attachment which appeared to have been passed under S. 145 (4) purported also to appoint a receiver for the property attached.

Held the appointment was ultra vires. ((Aiyling, J.) Subhadramma v. Satyam Swami.

8 MLT 314 : 7 Ind Cas 895 : 1910 MWN 821 : 11 Cr LJ 536.

4. **Attachment.**

(c) Attachment of crops and trees.

——S. 145 (4)—Crops served and stocked on land which is not subject-matter of dispute, cannot be attached.

CRIMINAL P. C. (V of 1898), S. 145—5. Attachment —(c) Attachment of crops and trees

The crops that had already been cut and kept in Khalihan (storing place) which lies in plots which are not the subject-matter of dispute are movable property, and consequently the Magistrate has no jurisdiction to attach them under S. 145 (4): AIR 1938 Pat 527; 30 Cal 110 and AIR 1917 Pat 183, Rel. on; 14 IC 759 (Mad) and AIR 1928 Sind 68, Disting; AIR 1928 Sind 193, Ref.; AIR 1948 All 94, Dissent. (Imam and Narayan, JJ.) Deonandan Singh v. Thakur Singh.

AIR 1949 Pat 58 : 1949 PWN 34 : 1949 AWR Sup 45 : 27 Pat 670 : 49 Cr LJ 657.

——Dispute concerning trees on joint land—Trees cut but not removed from land—Attachment of.

Section 145 being a preventive section, it should be given a liberal interpretation and if the dispute is as regards land then the Magistrate would clearly have jurisdiction to pass an order relating to movable property which may be attached to the land or appertains to it. Where in a dispute relating to rights in certain trees growing on joint land, the complainant party claims a share in the trees standing thereon but the accused party claims to have been given the right to cut the trees by certain persons who claim to be exclusive owners of the trees, the dispute mainly relates to land and the Magistrate has jurisdiction to attach the trees which have been cut but which are still lying at the place where they were standing: 22 All 266: AIR 1927 All 99; 30 Cal 110 and AIR 1917 Lah 35, Disting. (Malik, J.) Gaya Prasad v. Emperor

AIR 1948 All 94 : ILR (1947) All 741 : 1947 AWRHC 292 : 1947 ALJ 533 : 49 Cr LJ 15.

4. **Attachment.**

(d) Attachment of moveables.

——Movable property included within immovable property—Attachment under S. 145.

If moveable property is included within immoveable property, the attachment of the latter kind of property under the provisions of S. 145 would not render the incidental attachment of moveable invalid or bad in law for, it would prima facie belong to the person in possession of the immoveable properties. (Misra, J.) Narsingh v. Suraj Kishore Devi.

AIR 1951 All 826 : 1951 ALJ 714 : 52 Cr LJ 1501.

——Where a dispute relates not merely to a building but also to the goods and other movable property within the building a Magistrate acting under S. 145 has power to attach the movable property as well. (Bhide, J.) Prem Kaur v. Benarsi Das.

AIR 1933 Lah 409 : Ind Rul (1933) Lah 177 : 34 PLR 368 : 14 Lah 615 : 142 IC 207 : 34 Cr LJ 342.

——S. 145—Power of Magistrate.

A Magistrate has no jurisdiction under S. 145 to attach moveable properties in a house. (Stuart, J.) Gajraj Singh v. Emperor.

CRIMINAL P. C. (V of 1898), S. 145—4. Attachment —(d) Attachment of moveables

AIR 1922 All 528 (1) : 20 ALJ 906 : LR 3 A 189 (Cr.) : 71 IC 213 : 24 Cr LJ 85.

——Applicability—Moveables.

The Magistrate has no jurisdiction to order attachment of moveables under the section, (Wazir Hasan, A. J. C.) Arjun Singh v. Chandan Khan.

AIR 1921 Oudh 6 : 24 OC 167 : 63 IC 321 : 22 Cr LJ 625.

4. Attachment.

(e) Cancellation of preliminary order.

See also Note 6 (e)—Consequential orders after cancellation.

——S. 145 (5)—Cancellation of order of attachment.

Where the Magistrate decides that the case under S. 145 was to continue and separate proceedings under S. 107 were required, he cannot pass an order cancelling his previous order directing the attachment under S. 145 (5). (Oak, J. C.) Madholal v. Mt. Ladi.

AIR 1951 Ajmer 12.

——Magistrate cannot order delivery of attached property to one party after filing the proceedings.

Where a Magistrate attaches in cases of emergency the property which is the subject of dispute under S. 145 and after recording evidence adduced by the parties to the proceeding comes to the conclusion that there is no danger of a breach of the peace and on that ground files the proceedings he has no jurisdiction to direct that the attached property should be delivered to one of the parties to the proceeding. In such a case the proper order is to direct that the property should remain in his custody and management pending decision of a Civil Court on the question of title. 48 Cal. 522 (S.B.) and 1 L.W. 103, Foll. (Wadegaonkar, A. J. C.) Dasharath v. Tarachand.

AIR 1925 Nag 297 : 89 IC 514 : 8 NLJ 69 : 21 NLR 191 : 26 Cr LJ 1378.

(Overruled in AIR 1951 Nag 201 : 52 Cr LJ 1)

——Ss. 145 (4) and 517—Attachment of property—Cancelment of order under S. 145— Disposal of attached property—Procedure.

Where certain properties were attached under S. 145 but the order was on enquiry cancelled there being no immediate danger of the peace. Held, that the Magistrate had no jurisdiction to direct that the attached properties should be delivered to one of the parties. That would be in effect deciding the question at issue. The proper procedure is to keep them or their sale-proceeds in deposit, until one of the parties establishes his right to it in a Civil Court. (Ayling, J.) Chenga Reddi v. Ramasami Goundan.

AIR 1915 Mad 588 : 1 LW 1032 : 27 IC 152 : 16 Cr LJ 104.

4. Attachment.

(f) Effect of attachment.

CRIMINAL P. C. (V of 1898), S. 145—4. Attachment —(f) Effect of attachment

——S. 145 (4) Proviso 2.

The party against whom an order of attachment has been passed under S. 145 (4) Proviso 2, can be dispossessed from the property by the Nazir under the directions of the Court. It is immaterial whether the Nazir is designated as receiver or mere servant of the Court. (Oak, J. C.) Madho lal v. Mt. Ladi.

AIR 1951 Ajmer 12.

——Appointment of receiver operates as injunction—Breach of order of injunction amounts to contempt.

The appointment of a Receiver over a property operates as an injunction against the parties to the suit and their representatives and has the effect of restraining them from receiving or in any way interfering with any part of the property comprised in the order of appointment and any breach of this injunction amounts to a contempt of the Court and the party at fault can be dealt with accordingly. (1892) 1 Ch. 11 ; 21 Cal 85 and AIR 1924 Nag 136, Foll. (Sharma and Bapna, JJ.) Bhoor Singh v. Rura.

1946 JLR 445.

——S. 145 (4)—Attachment under Proviso to S. 145 (4)—Effect of.

The effect of an attachment under the proviso to S. 145 (4) is to bring the property under the control or custody of the Magistrate. The parties have no longer any control or possession over the land. The Magistrate may take such steps as he thinks fit for its proper custody and management. It is, therefore, competent for the Magistrate to settle the land attached pending the disposal of the case. Such action does not militate against S. 145 (8). (Manohar Lall and Chatterji, JJ.) Nandkishore Prasad v. Radhakishun.

AIR 1943 Pat 124 : 21 Pat 743 : 9 BR 231 : 16 RP 292 : 205 IC 429 : 44 Cr LJ 414.

——Entry into house for removal of movable property therein after attachment without Magistrate's orders—Legality of.

Once a house is attached, the Court is deemed to be in possession of it and neither party can enter it or go into the premises appurtenant to it or remove any movable property which may be on those premises without getting an order from the Magistrate. (Allsop, J.) Niranjan Lal v. Emperor.

AIR 1936 All 141 : (1936) ALJ 83 : 8 RA 661 : 1936 AWR (HC) 192 (1) : 160 IC 870 (1) : 37 Cr LJ 346.

——The object of proceedings under S. 145. being to determine which party was in possession at the date of the proceedings and to declare such party to be entitled to retain possession the possession of the Court during attachment in the course of those proceedings should enure for the benefit of such party in whose favour such a declaration is made. (Case-law discussed.) (Suhrawardy

CRIMINAL P. C. (V of 1898), S. 145—4. Attachment —(f) Effect of attachment and Mukerji, JJ.) Abinash v. Tarini Charn.

AIR 1926 Cal 782 : 30 CWN 541 : 95 IC 117.

4. Attachment.

(g) Mode of attachment.

——S. 145 (4), Proviso 2—Attachment—Procedure indicated. (Krishnan, J. C.) State of Vindhya Pradesh v. Ram Lakhan.

AIR 1953 VP 25 : 1953 Cr LJ 1198.

——Attachment by police on Magistrate's order is illegal but has no effect on subsequent trial. (Brij Mohan Lall, J.) Vidya Ram v. Ganga Sahai.

AIR 1953 All 455 : 1952 RDHC 17 : 1952 ALJ 221 : 1953 Cr LJ 1009.

——Order of attachment when to be passed — Attachment before preliminary order—Validity.

A Magistrate derives jurisdiction to order attachment only under proviso (2) to S. 145 (4) that is after the preliminary order has been passed. A Magistrate has no jurisdiction at all to start proceedings under S. 145 by passing the preliminary order, unless he is first satisfied that a dispute concerning land and likely to cause breach of peace exists; unless he assumes jurisdiction, he cannot order any attachment.

Hence where the Magistrate directs a police officer to enquire and report whether a breach of the peace is likely to exist at the same time asks him to attach the land if there is such likelihood the order is illegal and without jurisdiction and any attachment by the police officer in pursuance of it is also void. In such a case the party who is in possession of the land at the time of such attachment must be deemed to continue in possession till the date of preliminary order. (Desai, J.) State v. Mukanda Singh.

AIR 1951 All 621 : 52 Cr LJ 893.

——S. 145 (4), Second Proviso—Power to attach—Delegation of.

A Magistrate has no authority to delegate his power to make an attachment under the second proviso to S. 145 (4). (P. L. Bhargava, J.) L. Babu Ram v. Ram Prasad.

1951 AWR (HC) 58.

——S. 145 (4)— Crop attached under S. 145 (4) and sale ordered—Proceedings under S. 145 drawn up subsequently—Procedure, held irregular.

The Magistrate, on December 19, 1941, after hearing the parties, attached the crops on the disputed land under S. 145 (4) and ordered the same to be sold. The proceedings under S. 145 could not, however, be formally drawn up and signed until February 14, 1942 because there was some delay in obtaining the necessary details regarding the identification of the land:

Held, that at best there was an irregularity in the procedure adopted by the Magistrate, but the petitioner, having himself taken the benefit under the order, could not be heard to complain of it.

CRIMINAL P. C. (V of 1898), S. 145—4. Attachment —(g) Mode of attachment (Manohar Lall and Chatterji, JJ.) Nandkishore Prasad Singh v. Radhakishun.

AIR 1943 Pat 124 : 21 Pat 743 : 9 BR 231 : 15 RP 292 : 205 IC 429 : 44 CrLJ 414.

——In a proceeding under S. 145, a Magistrate can effect attachment of the property in dispute through the Police; attachment by prohibitory order is not the only mode of attachment contemplated by the Criminal P. C. (Bhide, J.) Prem Kaur v. Banarsi Das.

AIR 1933 Lah 409 : Ind Rul (1933) Lah 177 : 34 PLR 368 : 14 Lah 615 : 142 IC 207 : 34 Cr LJ 342.

4. Attachment.

(h) Other temporary order.

——Under S. 145, Criminal P. C., a Magistrate has jurisdiction to attach the disputed property in a case of emergency, pending the holding of the enquiry, but he has no power to make an order restraining both parties from entering the property until further orders. (Dunkley, J.) U Pyinnya v. U Wilatha.

AIR 1931 Rang 51 (2) : Ind Rul (1931) Rang 127 : 131 IC 63 : 32 Cr LJ 637 (1).

——A Magistrate's order that neither party should work the land is incorrect. Under S. 145 (4), if he thinks the case is emergent he can attach the land. (Carr, J.) Mg Po Lon v. Mg. Ba On.

AIR 1925 Rang 111 : 84 IC 548 : 3 Bur LJ 256 : 26 Cr LJ 324.

——Temporary order, pending decision on question of profession—Legality.

A Magistrate cannot, under S. 145 of the Code, pass a temporary order restraining a party from proceeding with a construction upon the disputed land pending his decision on the question of possession. (Scott-Smith, J.) Ram Ditta v. Dyal Mal.

AIR 1921 Lah 205 : 14 PLR 1921 : 59 IC 160 : 2 PWR 1921 Cr : 22 Cr LJ 48.

5. "Attend his court."

——Parties.

There is no legal bar to a landlord being represented by his employee in S. 145 proceedings. (Mitter and Sen, JJ.) Turu Mahji v. State.

AIR 1953 Cal 397 : 57 Cal WN 311 : 1953 Cr LJ 908.

——Permission to party to appear by pleader — Magistrate cannot subsequently insist upon personal appearance. (Kuppuswami Aiyar, J.) Manikyala Rao v. Venkatappayya.

AIR 1946 Mad 447 : 59 MLW 300 : 1946 MWN 356 : 1946-1 MLJ 443 : 226 IC 417 : ILR (1947) Mad 234 : 47 Cr LJ 936.

——Failure of complainant to attend on date fixed —Case cannot be dismissed.

There is no provision in S. 145, Criminal P. C., which would warrant the dismissal of the case merely because the complainant failed to attend.

CRIMINAL P. C. (V of 1898), S. 145—5. "Attend his court"

The order of the Magistrate dismissing the case for default of the complainant is ultra vires, and consequently, the question of the subsequent revival of the case on the application of the complainant does not arise. (Bennett, J.) Raquma Mt. v. Mt. Ghirai.

AIR 1940 Oudh 22 : 1939 AWR (CC) 277 : 12 RO 142 : 1939 OWN (CC) 974 : 184 IC 751 : 41 Cr LJ 96 (2).

——Procedure.

It is illegal for a Magistrate drawing up proceedings under S. 145, to direct parties to appear before another Magistrate. Illegality cannot be cured. (Chatterji, J.) Basudeva Sinha v. Ram Saroop.

24 PLT 326

6. Cancellation of preliminary order—Sub-Section (5).

(a) Cancellation on application of party.
(b) Cancellation on application of third person.
(c) Cancellation suo motu.
(d) Cancellation without any material.
(e) Consequential orders after cancellation.

See also, Note 4 (e)—Cancellation of preliminary order.

(f) Costs.
(g) Grounds and materials.
(h) Revival of proceedings.

See also Note 16—Effect of order under the section.

(i) Stage for cancellation.

6. Cancellation of preliminary order—Sub-Section (5).

(a) Cancellation on application of party.

——Where in a proceeding under S. 145, Criminal P. C., each side asserted in its written statement that there was no contingency of a breach of the peace by him saying nothing about the intentions of the other parties:

Held that this was not sufficient for cancellation of the proceedings under S. 145 (5).

Per Sinha J.—The question of being satisfied as to the likelihood of a breach of the peace occurring, is an element to be considered for an order under S. 145 (1), but once the proceedings have been validly initiated, it is not one of the essential ingredients in passing the final order under S. 145 (6). No doubt, the jurisdiction being a preventive one, the moment a Magistrate is satisfied that there is no longer a possible apprehension of a breach of the peace, he should bring the proceedings to an end. But that does not mean that he should at every stage go on recording his satisfaction as to the existence or otherwise of such an apprehension. If he chooses to go on, it must be presumed that he is not satisfied that the apprehension has ceased. (Chakravartti and Sinha, JJ.) Khudiram Mandal v. Jitendra Nath.

AIR 1952 Cal 713 : 56 CWN 608 : 1952 Cr LJ 1411.

CRIMINAL P. C. (V of 1898), S. 145—6. Cancellation of preliminary order—Sub-s. (5)—(a) Cancellation on application of party

——Both parties alleging no danger of breach of peace from his side—Statement of one found false—Magistrate held justified in not dropping proceeding. (Agarwala, J.) Shankar v. Rex.

AIR 1950 All 274 : 1950 ALJ 209 : 1950 AWR 388 : 51 Cr LJ 769.

——Statement of each party that that party did not intend to break peace—S. 145 (5) is not satisfied.

Held, that the statements made by each party that that party did not intend to break peace, taken together could not be held to establish the facts required by Sub-S. (5) of S. 145, Criminal P. C., namely, that a party shows that "no.. dispute exists or has existed." (Edgley and Blank, JJ.) Jnanendra Narayan v. Samed Molla.

AIR 1943 Cal 559 : 16 RC 338 : 209 IC 215 : 45 Cr LJ 107.

——Once a preliminary order has been properly made by a Magistrate, it is open to the opposite party to show to the Magistrate by evidence that in fact there is no present danger of a breach of the peace. (Ram Lall, J.) Guruditta v. Taja.

AIR 1939 Lah 108 : 40 Cr LJ 519.

——S. 145 (5)—Denial of existence of dispute—Necessity of.

Section 145 (5), Criminal P. C., applies only to those cases where any of the parties concerned in the dispute or any other person interested appears before the Magistrate and denies the existence of such dispute, and if this is not the case, Sub-S. (5) does not come into operation at all. (Din Mohammad, J.) Sri Chand v. Bashambar Nath.

AIR 1936 Lah 1012 : 38 Cr LJ 242.

——S. 145 (5) — Denial of dispute — Burden of proof.

In a proceeding under S. 145, Criminal P. C., if any party or other person interested denies the existence of the dispute, the onus lies on him to show that it does not exist and the Magistrate should state clearly whether he believes or not that a dispute likely to cause a breach of the peace exists.

But, where, though the Magistrate did not definitely say that there was a likelihood, yet, he found that there was a 'quarrel' and there was also evidence to show that the complainant wanted to take forcible possession:

Held, that it might reasonably be concluded that there was a breach of the peace and the Magistrate's order was not ultra vires. (Smith, J.) Emperor v. Munnu.

AIR 1932 Oudh 21 : 8 OWN (CC) 1182 : Ind Rul (1931) Oudh 428 : 134 IC 1020 : 33 Cr LJ 46.

CRIMINAL P. C. (V of 1898), S. 145—6. Cancellation of preliminary order—Sub-s. (5)—(a) Cancellation on application of party

——Power of Magistrate—Stay of proceedings.

When the Magistrate is able to act upon the police report or other information in starting proceeding under S. 145, he is competent to stay further proceedings on similar information regarding absence of likelihood of breach of peace without being obliged to record such evidence as the parties may adduce. AIR 1924 Mad. 795, Rel. on. (Suhrawardy and Graham, JJ.) Abdur Rahman v. Dinesh Haldar.

AIR 1929 Cal 328 : IR 1930 Cal 232 : 122 IC 296 : 33 CWN 399 : 31 Cr LJ 409.

——S. 145, Sub-S. (5) — Quashing of proceeding under S. 145.

A proceeding under S. 145, drawn up by a Deputy Magistrate was transferred by the District Magistrate to his own file and then summarily quashed on the sole ground that he thought that the letter addressed to him by one of the parties contained an admission that the other party was in actual possession of the land in dispute.

Held that the order quashing the proceeding was without jurisdiction as it was not in accordance with the provisions of Sub-S. (5) of S. 145. If the District Magistrate had quashed the proceeding on a full consideration of all the facts and after hearing the objections, if any, of the parties, the High Court would not interfere with the order quashing the proceeding. (Brett and Ryves, JJ.) Tara Charan Sarkar v. Bengal Coal Company, Ltd.

13 CWN 125 : 4 Ind Cas 354 : 10 Cr LJ 560.

——S. 145 (5) lays down that nothing shall preclude any party required by the preliminary order to attend the Magistrate's Court, from showing that no dispute likely to cause a breach of the peace existed and it is not open to the magistrate to refuse to receive the evidence tendered to him. (Davies and Moore, JJ.) Raja of Karvatnagar v. Lodd Govind Das.

29 M 561 : 16 MLJ 419 : 1 MLT 405 : 5 Cr LJ 91.

6 Cancellation of preliminary order—Sub-Section (5).

(b) Cancellation on application of third person

——Dropping proceedings after passing the preliminary order is not illegal if the Magistrate is satisfied that no dispute likely to cause a breach of the peace existed although in coming to the conclusion he acted on the petition of a third party to the proceedings; and the Magistrate is not bound under such circumstances to record the evidence of the witnesses of the petitioner who might have shown by their evidence that a dispute still existed. (Spencer, J.) Suryanarayana v. Ankineed Prasad.

CRIMINAL P. C. (V of 1898), S. 145—6. Cancellation of preliminary order—Sub-s. (5)—(b) Cancellation on application of third person

AIR 1924 Mad 795 : 81 IC 626 : 20 MLW 58 : 35 MLT 68 : 34 MLT 248 : 47 Mad 713 : 46 MLJ 565 : 25 Cr LJ 978.

6. Cancellation of preliminary order—Sub-Section (5).

(c) Cancellation suo motu.

——S. 145 (4) and (5)— Cancellation of preliminary order— Proceedings dropped without cancelling order.

Where the Magistrate fixed a date for filing written statements by the parties, but without waiting up to that date and without giving any opportunity to the parties to produce their evidence with respect to the actual possession and without cancelling the preliminary order, the Magistrate dropped the proceedings:

Held that the order dropping the proceedings was illegal. (Sharma, J.) Goggar v. State.

1952 RLW 267 : ILR (1952) 2 Raj 90.

——S. 145 (5)—No dispute likely —Original order may be cancelled and further proceedings stayed. A I R 1940 Sind 57, Rel. on. (C. B. Nagarkar, J. C.) Hansa Lachman Jat v. Ranjit Ghisa Jat.

1948 AMLJ 19.

——Applicant's possession joint—Proper order.

When a Magistrate comes to the conclusion in proceedings under S. 145, that the applicant's possession is joint and not exclusive and that he would not, therefore, be in a position to make an order of exclusive possession in favour of any party, the proceedings can be terminated by cancelling his order under S. 145 (1). (Lobo, C. J. and Thadani, J.) Kodanmal Bassarmal v. Emperor.

AIR 1945 Sind 110 : ILR (1945) Kar 78 : 1946 Sind Rul 19 : 221 IC 112 : 47 Cr LJ 78.

——Magistrate can drop proceedings once started if he finds no likelihood of breach of peace.

Proceedings under S. 145 are not taken in the interests of private parties but for the preservation of the public peace and if the Magistrate is satisfied that the likelihood of the breach of the peace either did not exist or that it has ceased to exist, it is the proper duty of the Magistrate to drop proceedings under S. 145 and withdraw from interfering with the rights of parties in the property. 30 Cal. 112, Rel. on; 20 MLW 58, Foll.

Clause (5) of S. 145 provides for a special case where as the Magistrate is proceeding with the trial of the question of possession, the parties to the proceedings or even other persons who are interested are given the right to show that no dispute likely to cause a breach of the peace exists or has existed. The existence of this clause does not take away the power of the Magistrate himself to drop proceedings if he is satisfied that there is no further likelihood of

CRIMINAL P. C. (V of 1898), S. 145—6. Cancellation of preliminary order—Sub-s. (5)—(c) Cancellation suo motu

the breach of the peace. (Krishnan, J.) Narasayya v. C. Venkiah.

AIR 1925 Mad 1252 : 91 IC 399 : 49 Mad 232 : 22 MLW 524 : 1925 MWN 792 : 49 MLJ 784 : 27 Cr LJ 95.

——Power of Magistrate—Recording opinion.

Where as the result of his enquiry the Magistrate comes to the conclusion that there was no danger of a breach of the peace, his proper course then is to cancel his order under S. 145 (5) and he cannot pass an order under cl. (6). There is nothing in the Code to prevent the Magistrate from recording the results of his enquiry and the opinions at which he has arrived as to possession. (Pullan, A. J. C.) Nawab Singh v. Rukmangad Singh.

AIR 1926 Oudh 182 : 89 IC 710 : 26 Cr LJ 1398.

——Duties of Magistrate.

A Magistrate can at any stage of an inquiry under S. 145 drop proceedings on being satisfied that there was no apprehension of the breach of the peace. (Ayling and Napier, JJ.) Kumulammal Avargal v. Vavu Rowther.

AIR 1917 Mad 237 : 33 IC 314 : 4 LW 57 : 17 Cr LJ 138.

6. Cancellation of preliminary order—Sub-Section (5).

(d) Cancellation without any material.

——Ss. 145 and 146—Joint possession.

The primary object of a proceeding under S. 145, Cr. P. C., is prevention of breach of peace. Where therefore after the death of the previous owner his nephews and widow were quarrelling over their respective rights to his property, widow's status as his married wife was also under challenge, the police had reported apprehension of breach of peace and the Magistrate thereupon drew up the proceeding under S. 145 and also attached the disputed property, the very fact that the trying Magistrate passed a final order under S. 145, Cr. P. C., indicates that the apprehension of breach of peace still continues. Under these circumstances, if the lower Court's order is merely cancelled and the parties are relegated to the position which they occupied prior to the commencement of the proceeding there may be recrudescence of the trouble. The better course, therefore, is to attach the property in dispute under S. 146, Cr. P. C., leaving it to the parties to fight out their rights in the Civil Court. (Narasimham, J.) Mallik Rafiq v. Mallik Abdul Hakim.

AIR 1953 Orissa 278 : ILR (1952) Cut 626 : 1953 Cr LJ 1596.

——S. 145 (5)— Preliminary order— Cancellation of.

The question whether a dispute regarding the alleged right of a party to perform service in a church, likely to cause a breach of the peace, exists or has existed between the parties relating to the user of the church in question, is one of

CRIMINAL P. C. (V of 1898), S. 145—6. Cancellation of preliminary order—Sub-s. (5)—(d) Cancellation without any material

fact. If the dispute between the parties has ceased to exist, the Magistrate must record a finding to that effect and then only he will be justified in cancelling the preliminary order. In the absence of a definite finding on that question, the cancellation of the preliminary order cannot be justified.

Of course, the mere fact that one party contends that there is still a dispute will be no reason for holding that there is a dispute, if, as a matter of fact, the dispute must be taken to have been settled by the decision of a competent civil court. (Vithayathil, J.) Kochitti Chacko v. Markose Kathanar Joseph Kathanar.

AIR 1952 Trav. Co. 531 : 1952 Ker LT 361 : ILR (1952) TC 1016 : 1953 Cr LJ 9.

——S. 145 (4) (5) and (3) and S. 146 (1)—Scope of the inquiry.

For a disposal under S. 145 (4) and (6) or for one under S. 146 (1) the enquiry should be complete because these three are the recognized legal modes to close a proceeding under S. 145. Where the Magistrate did not act under S. 145 (5) the case was disposed of in a mode not warranted by law. (Koshi C. J. and Kumara Pillai J.) Subbiah Chettiar v. Esaki Muthu Othuvar.

1953 Ker LT 862.

——Striking of a case under S. 145 with a remark, that there was no likelihood of breach of peace, without any material before the Court for such order, is illegal.

Where after several adjournments and long after the evidence and arguments on both sides were heard the Court struck off the case with a remark "I find I passed no final order in this case. As so long time has elapsed, I do not think any breach of the peace is likely. I therefore strike the case off," though there was no material before the Court for concluding against such likelihood. Held, that the order was wholly illegal. It may be that if the Magistrate gets information from any source whatsoever that there is no longer any apprehension of a breach of the peace he would be entitled to drop the proceeding. (Kulwant Sahay, J.) Sastu Sahu v. Mathini Thakur.

AIR 1924 Pat 689 : 83 IC 665 : 1924 PHCC 231 : 3 Pat LR Cr 145 : 6 PLT 258 : 26 Cr LJ 105.

6. Cancellation of preliminary order—Sub-Section (5).

(e) Consequential orders after cancellation.

See also Note 4 (e)—Cancellation of preliminary order.

Where the Magistrate has found that there is no likelihood of breach of peace, he should have determined and close the proceedings and should have only directed the restoration of the land in dispute to the party from whose possession it was taken. His order that the land should remain in the Court's custody pending decision of a Civil

CRIMINAL P. C. (V of 1898), S. 145—6. Cancellation of preliminary order—Sub-s. (5)—(e) Consequential orders after cancellation

Court is without jurisdiction. (Siadatali Khan J.) Bua Bi v. Khadija Begum.

AIR 1953 Hyd 263 : ILR (1953) Hyd 358 : 1953 Cr LJ 1630.

——S. 145 (5)—Effect of order—When order is passed, the Magistrate ceases to have jurisdiction, notwithstanding that by mistake he omitted to withdraw the order of attachment previously passed by him. (Ramaswami J.) Nandipi Nagi Reddy v. Vadde Venkatappa.

AIR 1953 Mad 436 : 1952 Mad WN Cr 91 : 1952 MWN 387 : 1952-2 MLJ 163 : 1953 Cr LJ 825.

——Magistrate dropping proceedings does not become 'functus officio'—He can pass further orders for winding up. (Ramaswami J.) Nandipi Nagi Reddy v. Vadde Venkatappa.

AIR 1953 Mad 436 : 1952 MWN Cr 91 : 1952 M WN 387 : 1952-2 MLJ 163 : 1953 Cr LJ 825.

——Proceedings dropped — Subsequent order for disposal of property.

After the proceedings under S. 145 are dropped by the Magistrate, he becomes functus officio and has no jurisdiction to pass any order relating to the claim of the parties or to the disposal of the property. The parties should be left to settle their rights in a competent Court or in any manner they choose. The attachment order automatically ceases. Where the crops of the attached land are auction sold during the proceedings, on an application made by the party, the proper course would be to keep the amount deposited in Court until the party entitled to it has established his right in proper proceeding. (Lakshminarayan J. C.) Suresh Chandra Bhowmik v. Suresh Chandra Kapali.

AIR 1952 Tripura 29 : 1953 Cr LJ 71.

——Attachment of property — Preliminary order cancelled on petition by parties — Raising of attachment subsequently — Proper procedure indicated.

The Magistrate has the complete jurisdiction either to continue the proceedings or at any stage to drop it on being satisfied that no such dispute either existed or at any rate does not exist at that moment. However, if the proceedings are being dropped at joint petition of the parties, the Magistrate will be well advised as a matter of prudence to satisfy himself that the compromise is a real one, and not merely a device to get the dispute out of court, and fight it out in their own way.

If possible, the existence of the continuance of the dispute may be ascertained without inviting the police, because the arrival of the police does itself create a certain amount of restlessness.

Where the Magistrate accepts the petition without fully considering the bona fides of the petition and cancels the preliminary order, without passing any order regarding the raising of the attachment, in such a case the duty of the Magistrate is clear. Being functus officio, he cannot decide the question

CRIMINAL P. C. (V of 1898), S. 145—6. Cancellation of preliminary order—Sub-s. (5)—(e) Consequential orders after cancellation

of possession by taking evidence and weighing pros and cons. But whenever in course of a proceeding properties come to be in custodia legis the court has the duty and certainly the inherent power to restore status quo ante. In the event of the impossibility of restoring status quo ante, it will become necessary for the parties to start another proceeding before the Magistrate or any other competent court. But if possible this should be avoided.

It should be ascertained from the materials that came to the court before the passing of the preliminary order from whom the property passed into custodia legis. If those materials enable the ascertainment of the status quo ante, then it should be restored. If it does not then the attachment should be vacated without reference to either party's taking the property. If the parties still disagree they should reagitate the matter in the civil court, or expose themselves to a further proceeding under S. 145, Cr. P. C. (Krishnan J. C.) Ram Kripal v. Ganesh Prasad.

AIR 1952 V P 81 : 1953 Cr LJ 66.

——S. 145 (5) — Cancellation of the preliminary order, effect of.

Once the Magistrate drops the proceedings under S. 145 (5) and cancels his preliminary order, he becomes functus officio and the matter comes to a stage as if no proceedings at all were initiated under this section. After this there is no power left in the Magistrate to go into the evidence of the parties or any other record to find out and decide as to which of the parties was in possession of the whole or part of the disputed property. If he proceeds to examine the evidence and goes through the claims of the respective parties regarding the fact of their actual possession of the subject of dispute on the date of the preliminary order, then he virtually re-starts the proceedings which he had already closed and which he cannot revive in the absence of a dispute between the parties.

It is improper for the Magistrate in the first instance to attach the property in haste without being fully satisfied about the existence of a dispute between the parties and without an apprehension that a breach of peace is likely to take place without such attachment. Ordinarily therefore a situation should not arise in which the Magistrate may have to decide later that a dispute in fact never existed. If after the proceedings had started a situation arises whereby it appears that the dispute between the parties in fact never existed or that it has come to an end and the Magistrate drops the proceedings, then the attachment should also be lifted at the same time. If there is a clear note on the file of the Magistrate that the property was attached from the possession of a certain party, then the proper order should be to restore the possession of the property to that party. The natural result arising out of the proceedings under S. 145 after dropping

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or cancelling the proceedings, should be that the parties are restored to the position which they occupied before the proceedings were started, and in order to bring about status quo, the party from whose possession the property is attached should receive it back from the Court. This should, however, be done only when it is absolutely clear from the proceedings of the Court itself, that the property was taken from the possession of the party (to whom it is ordered to be restored at the time of attachment). If there is no such record then the only order should be about the release of the property from attachment because the Magistrate has no power left to decide on the basis of the evidence of the parties as to which of them was in actual possession at the date of preliminary order. AIR 1948 All 425, AIR 1942 Sind 117 Foll. Case law discussed. (Dave, J.) Ramsukh v. State.

1953 RLW 503.

——S. 145 (5) — Proceedings dropped—Magistrate does not become functus officio—He can pass order for winding up proceedings. (Ramaswami, J.) Velur Devasthanam by its head clerk R. Ramaswami Pillai v. A. Sambandamurthi Nainar.

AIR 1952 Mad 531 : 1952 MWN Cr 1 : 1952 MWN 53 : 1952-1 MLJ 161 : 1952 AWR (Sup) 28 : 65 MLW 441 : 1952 Cr LJ 1145.

——S. 145 (5)—Cancellation of preliminary order—Magistrate has no power to order possession to a particular party.

When the proceedings under S. 145 are dropped the Magistrate becomes 'functus officio' and has absolutely no power to make an order that the property be returned to a particular party because that amounts to deciding the question of possession which the Magistrate has no right to do after dropping the proceedings. (Sharma, J.) Kishan Sahai v. State.

AIR 1952 Raj 101 : ILR (1951) 1 Raj 710 : 1952 Raj LW 11 : 1952 Cr LJ 1024.

——S. 145 (5) (1) — Cancellation of preliminary order under Sub-S. (1)—Restoration of property attached under Sub-S. (4)— 17 Nag LJ 225 and AIR 1925 Nag 297 : 26 Cr LJ 1373, Overruled.

Where the Magistrate acts under Sub-S. (5) and cancels the preliminary order passed under Sub-S. (1), there would be nothing wrong if he passes an incidental order cancelling the order of attachment as well. It is but right that when the jurisdiction to act under the section is found wanting the Magistrate should restore the status quo ante. When it is not possible to determine the status quo ante because of the difficulty in determining from whom the property was attached, the appropriate order to pass is to retain the property in the custody of the Court and direct the parties to have recourse to a civil Court to obtain possession of the property. 17 Nag LJ 225 and AIR 1925 Nag 297 : 23 Cr LJ 1378 overruled. (Hidayatullah and R. Kaushalendra Rao, JJ.) State v. Sheoratan Singh.

CRIMINAL P. C. (V of 1898), S. 145—6. Cancellation of preliminary order—Sub-s. (5)—(e) Consequential orders after cancellation

AIR 1951 Nag 201 : ILR (1950) Nag 787 : 1951 NLJ 185 : 1951 AWR (Sup) 56 : 52 Cr LJ 1.

——Dropping of proceedings under S. 145 (5) — Order for disposal of property under S. 517 — Validity.

See ibid, S. 517.

AIR 1950 Cal 369 : 51 Cr LJ 1340.

——Cancellation of preliminary order under S. 145 (5) — Magistrate becomes functus officio — Magistrate has however power to pass order regarding restoration of attached property— Proper procedure —Order releasing attached property in favour of one party simply because other party is absent is without jurisdiction.

When proceedings are dropped under S. 145 (5) on the ground that there never existed a dispute likely to cause a breach of the peace the Magistrate's jurisdiction to act under the provisions of S. 145 altogether ends, and as such he can only pass an incidental order relating to the attached property. If he enters into a minute examination as to the claims of the respective parties regarding the fact of actual possession on the date of the initial order he will be doing precisely what he is not empowered to do. Therefore, proceedings having been dropped there is no question of his taking any evidence as to who was in possession on the date of the preliminary order. If the record shows that the property was attached from the possession of a certain party, the Magistrate must be deemed to have inherent jurisdiction to restore possession of the property to that party. By doing so he will be restoring the status quo ante. If, however, the record does not show this, then the only alternative for him is to pass an order that the attachment of the property should be lifted without saying in whose favour the release was to be effected. If the lifting of the attachment creates a danger to the breach of the peace, the Magistrate can start fresh proceedings under S. 145 (1). It is only in the case of sale proceeds of crops, in deposit in Court, that the Magistrate will direct that they will so remain in deposit till the claim of any party is declared by a competent civil Court. Case law referred.

Hence an order releasing the attached property in favour of one of the parties simply because the other party who also claimed its restoration, was absent on the date fixed for hearing of the application for restoration is irregular and without jurisdiction. (Agarwalla, J.) Rajdeo Singh v. Emperor.

AIR 1948 All 425 : 1948 AWR (HC) 216 : ILR (1949) All 384 : 49 Cr LJ 714.

——S. 145 (5) (1)—The Magistrate has no authority to order that the crops should be handed over to one of the parties to the proceedings from whom the property was attached. Overruled in AIR

CRIMINAL P. C. (V of 1898), S. 145—6. Cancellation of preliminary order—Sub-s. (5)—(e) Consequential orders after cancellation

1951 Nag 201 : 52 Cr LJ 1. (Pollock A. J. C.) Emperor v. Narottam Singh.

17 NLJ 225.

——Order under S. 145 (5) cancelling order under S. 145 (1)—Jurisdiction to further adjudicate.

Once the Magistrate passes an order under S. 145 (5), Cr. P. C., cancelling the order under S. 145 (1), he has no further jurisdiction to adjudicate upon the dispute between the parties, or adjudicate upon the division of the produce other than to direct that the produce should be restored if it had been taken, to the possession of the person from whom it had been taken. The parties must, so far as possible, be restored to the position which they occupied before the proceedings were started, not only with regard to the land but with regard to the produce of the land or its proceeds. But the circumstances may arise where it is not possible to put the parties in the position they had occupied before the proceedings started, once the produce had been sold. In such cases, the parties should be directed to seek redress of their grievances in Civil Court. (Davis, C. J. and Weston, J.) Jam Bhambho Khan v. Makhdum Muhammad Hassan.

AIR 1942 Sind 117 : 15 RS 55 : ILR (1942) Kar 120 : 202 IC 617 : 43 Cr LJ 876.

——Proceedings under S. 145 — Preliminary order under Sub-S. (1) made and property attached — Preliminary order, if can be subsequently cancelled—Property attached, if can be ordered to be delivered to one of parties.

Where in proceedings under S. 145, Criminal P. C., a Magistrate has issued a preliminary order under Sub-S. (1) and has attached the property in dispute, the Magistrate has jurisdiction under Sub-S. (5) to cancel the original order subsequently where the circumstances justify this. The Magistrate, however, has no power after cancelling the preliminary order to order delivery of the property attached, to one of the parties to the proceedings. The proper order in such a case is to direct that the property should remain in his custody and management pending decision of a Civil Court on the question of title. (Bennett, J.) Daljit Singh v. Tej Singh.

AIR 1939 Oudh 284 : 1939 OWN (CC) 891 : 12 RO 97 : 1939 AWR (CC) 203 : 15 Luck 19 : 184 IC 290 : 40 Cr LJ 930.

——Proceedings dropped —Continuance of attachment—Legality of.

Under S. 145, Criminal P. C., the Magistrate should decide who is in actual possession so that the parties may know who is to resort to a Civil Court as a plaintiff.

It is not open to a Magistrate to drop proceedings under S. 145, Criminal P. C., and yet order continuance of attachment. (Pandrang Row, J.) Lakshmana Rao v. K. Satyanarayana.

1937 MWN 55.

CRIMINAL P. C. (V of 1898), S. 145—6. Cancellation of preliminary order—Sub-s. (5)—(e) Consequential orders after cancellation

——When once the Magistrate raises the attachment and drops further proceedings in the case he has no jurisdiction to direct the delivery of possession of the disputed property to any person. (Sundaram Chetty, J.) Parandhamayya v. Virayya.

1930 MWN 771.

——Where a Magistrate finds that there is no likelihood of a breach of peace, he has no jurisdiction to pass an order that the lands under dispute should continue in the custody and management of the receiver. The proceedings under S. 145 having been dropped the Magistrate should direct the receiver appointed by him to hand over the property to the person from whom possession was taken. (Devadoss, J.) Mamidapalli Sattaya v. Cutumbara Rao.

AIR 1928 Mad 859 : 108 IC 904 : 10 AI Cr R 51 : 1 M Cr C 230 : 29 Cr LJ 456.

——After dropping proceedings, the magistrate becomes functus officio and has no jurisdiction to pass any further orders in the case e.g., with regard to the delivery of the possession of the attached property to either party. He must leave the parties to settle their rights in the manner they think best to do, in the meanwhile holding his hands. (Krishnan, J.) Narasayya v. C. Venkiah.

AIR 1925 Mad 1252 : 49 Mad 232 : 40 MLJ 784 : 27 Cr LJ 95.

——Where proceedings instituted under S. 145 are dropped with the consent of both parties on the ground that there is no likelihood of breach of the peace, the Magistrate has no jurisdiction to decide as to the title to the sale proceeds of the crop attached during the pendency of the proceedings. (Beasley, J.) Natesa Naicken v. Raghavachari.

AIR 1925 Mad 327 : 85 IC 256 : 20 MLW 924 : 26 Cr LJ 512.

——The Magistrate should withdraw attachment, as he is bound to do so, after a civil adjudication in favour of even some of the parties. (Seshagiri Aiyar J.) Vithoba Rao v. Narasingh Rao.

AIR 1917 Mad 453 : 4 Mad LW 55 : 35 IC 507 : (1916) 2 MWN 173 : 20 MLT 247 : 17 Cr LJ 331.

——Ss. 145, 517, 520 — Proceedings cancelled — Order allowing one of parties to reap crop—Legality.

After the cancellation of proceedings under S. 145, on the ground that there is no likelihood of a breach of the peace, the magistrate has no jurisdiction to allow one of the parties to reap the crops to the exclusion of the other. Such an order if passed under S. 517 is liable to be set aside under S. 520. (Geidt and Mookerjee, JJ.) Karimuddi Fakir v. Naimuddi Kaviraj.

3 CLJ 573 : 3 Cr LJ 466.

6. Cancellation of preliminary order—Sub-Section (5).

(f) Costs.

CRIMINAL P. C. (V of 1898), S. 145—6. Cancellation of preliminary order—Sub-s. (5)—(f) Costs

——Costs may be awarded where Magistrate permits the withdrawal of the proceedings.

Any order permitting the withdrawal of proceedings, and more so a final irrevocable order staying proceedings instituted under S. 145, after the Magistrate has assumed jurisdiction under that section, is an order falling within the purview of sub-S. 5 of that section, and, as such, a decision under that section within the meaning of S. 148. It is a decision by him that no such dispute has existed or exists, as to give him jurisdiction to continue the proceedings. There is nothing in Sub-S. (5) to prevent a Magistrate in arriving at that decision without recording any evidence whatsoever; and it is equally within his competence to rely upon information recorded by him from any source whatsoever including that contained in a statement made by any party to the proceedings. 9 MLT 324, Diss. from: 30 Cal 112 and 20 Cal. 867, Rel. on. Where therefore a Magistrate has permitted the withdrawal of the proceedings or has made an order staying proceedings altogether, it may fairly be assumed that he has acted on such implied admission and has decided under Sub-S. (5) of S. 145 that no dispute exists which would give him jurisdiction to continue the proceedings and that he is, therefore, competent to award costs. (Rupchand Bilaram and Desouza, A. J. Cs.) Relumal v. Pherumal.

AIR 1928 Sind 193 : 111 IC 441 : 22 SLR 386 : 29 Cr LJ 857.

6. Cancellation of preliminary order—Sub-Section (5).

(g) Grounds and materials.

——Termination of proceedings.

A Magistrate has a right to terminate proceedings under S. 145 if he is satisfied that there was no further likelihood of a breach of the peace or that there was initially no apprehension of a breach of the peace. The mere fact that the opposite party was absent or did not come forward to show cause would be no justification for the Magistrate to dismiss the proceedings or to come to the conclusion that there was no apprehension of a breach of the peace. (Randhir Singh, J.) Bhaggo Singh v. Sanoman Singh.

AIR 1954 All 13 : 1953 All LJ 471 : 1953 All WR (HC) 457 : 1953 Cr LJ 1858.

——The mere institution of a suit in the civil Court by a party would not by itself be sufficient to justify the dropping of proceedings under S. 145 if there is a danger of a breach of the peace which can best be averted by summary proceedings under that section. (Hemeon Ag. C. J.) Bishan Pusha Gond v. Mayaram.

AIR 1953 Nag 356 : 1953 NLJ 423 : 1953 Cr LJ 1795.

——S. 145 (5)—Magistrate holding that there is no apprehension of breach of peace and dropping proceedings — High Court will not lightly interfere in revision—(Criminal P. C. (1898), Ss. 435, 439).

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On the question of the sufficiency of the evidence on which the Magistrate comes to the conclusion that there was no likelihood of the breach of the peace and drops the proceedings under S. 145, the High Court in revision will not interfere with such an order unless it was obviously unreasonable or unjust, because though the High Court is invested with powers of revision still orders under this section should not be lightly disturbed; it is only in very exceptional cases that the High Court will interfere. (Ramaswamy J.) Velur Devasthanam by its head clerk R. Ramaswami Pillai v. A Sambandamurthi Nainar.

AIR 1952 Mad 531 : 1952 MWN Cr 1 : 1952 MWN 53 : 1952-1 MLJ 161 : 1952 AWR (Sup) 28 : 65 M L W 441 : 1952 Cr LJ 1145.

——Absence of parties — Cancellation of preliminary order—Validity.

Under Section 145 (5) a Magistrate has power to drop the proceedings only when any of the parties show that no such dispute as is contemplated in S. 145 (1) exists or has existed. Hence, a Magistrate acts illegally in dropping the proceedings on the mere ground that both the parties are absent when there is no material for him to hold that no such dispute as is mentioned in S. 145 (1) exists or existed. Where both the parties are absent the proper order to be passed would be one under S. 146 and not under S. 145 (5). (Mallappa, J.) Venkategowda v. Appajigowda.

AIR 1952 Mys 4 : 31 Mys LJ 162 : 1952 Cr LJ 111.

——No likelihood of breach of peace—Effect.

When a Magistrate finds that there is no likelihood of any breach of peace, the law requires him to cancel his order passed under S. 145 (1). The Magistrate has no jurisdiction to discuss evidence and then to pass an order that the land having been attached from the opposite party, they should continue in possession till evicted in due course of law as it is not a mere order of release but one contemplated by S. 145 and as such, without jurisdiction: AIR 1948 All 425, Disting.; 1949 ALJ 16, Rel. on. (Sapru and Seth, JJ.) Gangadhar v. State.

AIR 1952 All 580 : 1950 AWR 356 : 1950 All Cr C 109 : 1950 ALJ 282.

——Magistrate can cancel original order if satisfied that no dispute likely to cause breach of peace exists— Finding given on consideration of evidence by Magistrate is one of fact and High Court will not interfere.

It is not correct to say that when once proceedings are started under S. 145 the enquiry must be completed and a final order passed. Clause (5) of S. 145 does in fact confer upon the Magistrate holding the enquiry, the power to cancel the original order and stay further proceedings

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if he is satisfied that no dispute likely to lead to a breach of the peace exists, or has existed between the parties. Where evidence was recorded and the Magistrate on a consideration of that evidence was satisfied that a breach of the peace was not likely and that therefore there was no need to continue the proceedings, the finding is one of fact based on the Magistrate's appreciation of the evidence and the High Court will not interfere with the conclusion reached. (Nagarkar, J. C.) Hansa v. Ranjit.

AIR 1951 Ajmer 86 : 1948 AMLJ 19 : 52 Cr LJ 1472.

——Lease—Dispossessed by third person —Magistrate dropping enquiry under S. 145 — Lease expiring 4 months before enquiry was dropped— No useful purpose would be served by High Court going into question whether dispossession was likely to cause breach of peace.

Where the alleged dispossession of a person took place before two years and the person held the property on the basis of a lease for one year which terminated about 4 months prior to the date on which the proceedings under S. 145 were dropped by the Magistrate on the ground that there was no likelihood of the breach of peace no useful purpose will be served by the High Court going into the purely academic question as to whether the person was in possession two years ago and whether his dispossession did in fact give rise to the apprehension that a breach of the peace would be caused. (Nagarkar, J. C.) Hansa v. Ranjit.

AIR 1951 Ajmer 86 : 1948 AMLJ 19 : 52 Cr LJ 1472.

——S. 145 (1) and (5) — Order under S. 145 (1) passed upon complaint— Absence of complainant on date fixed in notice —Magistrate cannot dismiss complaint for default.

When once a Magistrate is satisfied as to the existence of a dispute likely to cause a breach of the peace and passes an order under S. 145 (1), all the contending parties, including the complainant under S. 145, thereafter are in position of opposite parties. It is for this reason that there is no provision in the Code for a complaint under S. 145 to be dismissed for default of appearance of the complainant after the Magistrate had issued an order under S. 145 (1). The only mode of cancellation of an order under S. 145 (1) before the matter is finally disposed of on merits is that provided by S. 145 (5). Consequently an order dismissing a complaint under S. 145 for default of appearance of the complainant on the date fixed in the notice issued under S. 145 (1) is without jurisdiction when the Magistrate does not act under S. 145 (5). (Agarwala, J.) Rajdeo Singh v. Emperor.

AIR 1948 All 425 : 1948 AWRHC 216 : ILR (1949) All 384 : 49 Cr LJ 714.

——S. 145 (5) — Proceeding cannot be dropped under Sub-S. (5) merely because there is no further violence—Continuance of breach of peace is not necessary for passing of final order.

Proceedings under S. 145, Cr. P. C., can be dropped under Sub-S. (5) only if there has been a subsequent settlement or if the petitioner has agreed to give up his right to possession and his claim to get back the possession. Merely because there has been no further violence it cannot be said that there cannot be a breach of the peace and the proceedings should be dropped. Continuance of a breach of the peace is not necessary to pass a final order: 36 Mad 275, Foll; AIR 1926 Bom. 91 and AIR 1939 Lah. 108, Ref. (Kuppuswami Aiyar, J.) Amritlal N. Shah v. Nageshwara Rao.

AIR 1947 Mad 133 : 1946-2 MLJ 349 : 59 Mad LW 645 : 1946 MWN 692 : 229 IC 530 : 48 Cr LJ 435.

——Magistrate, if and when can cancel his order under S. 145 (1) or terminate proceedings.

Sub-Sections (4) and (5) of S. 145, Criminal P. C., are not exhaustive and are not intended to prevent a Magistrate from terminating proceedings under S. 145, Criminal P. C., when he is satisfied that the very cause and reason of proceedings under S. 145, Criminal P. C., has ceased to exist. The Magistrate can cancel his order under Sub-S. (1) or terminate the proceedings when, upon other information, or, it may be, on his own information, he is satisfied that no dispute likely to cause a breach of peace exists. However, as proceedings are instituted upon some information, so they should be terminated likewise upon some information and ordinarily, it is desirable before a Magistrate terminates proceedings of this sort in the exercise of powers which by necessary implication, the section confers, that he should have on record a Police report or other information to the effect that no dispute likely to cause a breach of the peace exists. But where, the diary shows that the parties attended the Court from time to time, talked about a compromise and then finally stayed away and did nothing for months, that might be said to constitute information which justify a Magistrate in his opinion that no dispute likely to cause a breach of the peace existed any longer and would justify his order terminating the proceedings. (Davis, J. C. and Tyabji, J.) Muhammad Ayoob Saifuddin v. Gulzar Mehar.

AIR 1940 Sind 51 : ILR (1939) Kar 775 : 12 RS 265 : 187 IC 752 : 41 Cr LJ 507.

——Ss. 145, 561-A —Institution of civil suit for declaration—Appointment of Receiver in respect of property in dispute—Criminal proceedings, if can be quashed—Inherent powers under S. 561-A—Prevention of abuse of process of Court.

The mere institution of a suit in the Civil Court for declaration in respect of the right threatened or infringed is not by itself sufficient to justify the dropping of proceedings under S. 145, Cri-

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minal P. C., which have already been instituted, if there is a danger of breach of the peace which can best be averted by summary proceedings under S. 145. But where the Civil Court has appointed a Receiver, all such danger is averted. The policy of the law is to give preference in matters of this nature to possession by a Receiver appointed under orders of a Civil Court. Consequently, in such a case, the only proper course would be to drop the proceedings under S. 145 in order to avoid unnecessary harassment to the parties and useless waste of time, money and energy:

Held, also that under these circumstances, the case was an eminently fit one for the exercise of the inherent powers of the Court recognised under S. 561-A, Criminal P. C., in order to put a stop to the proceedings under S. 145, Criminal P. C., which have now become wholly useless and unnecessary, especially as if the proceedings under S. 145 were allowed to be continued, it would be a sheer abuse of the process of the Court for the preventing of which S. 561-A was intended. (Srivastava, J.) Makhana Devi Mt. v. Kamla Pat Ram.

AIR 1935 Oudh 255 : 7 RO 438 : 1935 OWN (CC) 239 : 10 Luck 564 : 154 IC 121 : 36 Cr LJ 464.

——S. 145 (5), (7)—Proceedings dropped by reason of death of a party—Legality of.

The object of S. 145, Criminal P. C., is to prevent breaches of the peace from occurring as a result of disputes regarding land or water or the boundaries thereof, and it provides a summary procedure for determining which party was in possession at the date on which the proceedings were started. Once proceedings under that section have been started, they must be proceeded with until the question of possession has been determined, and the order on which the proceedings are based can only be cancelled under Sub-S. (5) if the Magistrate is satisfied that no dispute likely to cause a breach of the peace exists or has existed. An order dropping the proceedings made merely because one of the parties to the proceedings had died is ultra vires and fresh proceedings are without jurisdiction. But such an eventuality is provided for in Sub-S. (7) which empowers the Magistrate to cause the legal representatives of the deceased to be made parties, and directs that the Magistrate shall thereupon continue the enquiry. (Patterson and Guha, JJ.) Misil Mirdha v. Abdul Rahim.

AIR 1934 Cal 787 : 38 CWN 724 : 7 RC 354 (2) : 153 IC 174 : 36 Cr LJ 303.

——Foundation of jurisdiction —Apprehension of breach of the peace.

The apprehension of a breach of the peace is the first condition necessary to give a Magistrate jurisdiction under S. 145, Cr. P. Code, and if it is found there is no longer any such apprehension

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the jurisdiction ceases, and he is bound to cancel the initial order and stay all further proceedings under clause (5). (Newbould and Suhrawardy, JJ.) Mahomed Khandu Sarkar v. Sadakali Sheikh.

AIR 1923 Cal 577 : 38 CLJ 284 : 76 IC 963 (1) : 25 Cr LJ 291 (1).

——S. 145 (1) and (4)—Preliminary order—Cancellation of—Dropping of proceedings — Revision.

A magistrate has jurisdiction to cancel an order passed under S. 145 (1) Cr. P. Code, and to stay proceedings if he becomes satisfied, whatever the source of information may be that the state of things does not exist which alone would give jurisdiction to proceed with the enquiry. The High Court could not interfere in such cases as the magistrate has not acted without jurisdiction. (30 C. 112 Foll.) (Scott Smith, J.) Santokh Singh v. Ram Singh.

AIR 1921 Lah 92 : 2 Lah 364 : 66 IC 516 : 23 Cr LJ 292.

——Applicability.

S. 145 of the Code contemplates the existence of disputes regarding property likely to lead to a breach of the peace, and where all likelihood of a breach of the peace has disappeared all necessity ceases for maintaining any orders passed on account of the dispute. (Wilberforce, J.) Khushi Ram v. Emperor.

AIR 1920 Lah 286 : 1 Lah 451 : 59 IC 36 : 6 PWR (Cr) 1921 : 22 Cr LJ 4.

——Initiation of proceedings—Dropping of.

Where proceedings under S. 145 have once been started, the Magistrate cannot strike them off. He must pass an order either under S. 145 or under S. 146. (Atkinson and Coutts, JJ.) Trilochan v. Jogeshwar.

AIR 1919 Pat 37 : 51 IC 352 : 20 Cr LJ 464.

(In this case, the proceedings were struck off because only the first party was present on the adjourned date of hearing and had prayed for time. The proceedings were not struck off on the ground that there was no likelihood of the breach of the peace which, alone gives jurisdiction to the magistrate to drop the proceedings. —Ed.)

6. Cancellation of preliminary order—Sub-Section (5).

(h) Revival of proceedings.

See also Note 16.—Effect of order under the section.

——Proceedings under S. 145, dropped under Sub-S. (5), cannot be revived—No bar to start fresh proceedings.

Where the proceedings under S. 145 are dropped under Sub-S. (5), there is no provision in the Code which authorises the Magistrate to revive or review his own order or to revive the order so cancelled. However, there is no bar to the Magistrate starting fresh proceedings under Sub-S.

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(1) if he was satisfied that there was still an apprehension of the breach of the peace and that was the proper course for him to take: 20 Cal. 867, Rel. on. (Ahmad, J.) Joynal Abedin v. Nawab Ali.

1948 OA Sup 57 : 1948 AWR Sup 57 : 52 CWN 251.

——Duty of Magistrate— Cancellation of order—Procedure.

When an order under S. 145 is to be cancelled on the ground that no dispute likely to cause breach of peace exists, the Magistrate cannot revive the proceedings. He can start fresh proceeding only on fresh material. (Jwala Prasad, J.) Khubi Singh v. Darbari Mahton.

AIR 1921 Pat 176 : 2 Pat LT 267 : 1921 Pat HCC 167 : 62 IC 177 : 22 Cr LJ 481.

6. Cancellation of preliminary order—Sub-Section (5) — (i) Stage for cancellation.

——It cannot be said that when once the Magistrate finds that there is likelihood of breach of peace, he cannot after the filing of written statements, and evidence of the parties find further that there is no likelihood of breach of peace. (Siadatali Khan, J.) Bua Bi v. Khadija Begum.

AIR 1953 Hyd 263 : ILR (1953) Hyd 358 : 1953 Cr LJ 1630.

——S. 145 (5)—Magistrate can drop proceeding at any stage, if he comes to conclusion that there is no apprehension of breach of peace.

When the Magistrate who is responsible for the maintenance of law and order within his own division comes to the conclusion that there was no longer any apprehension of a breach of the peace, it is his duty to drop further proceedings under S. 145 leaving it open to the parties to resort to the appropriate remedies in civil Courts. This can be done at any stage. It is not obligatory for him to take evidence before dropping proceedings, and need not give an opportunity to the parties to establish the contrary. (Ramaswamy, J.) Velur Devasthanam by its head clerk R. Ramaswami Pillai v. A. Sambandamurthi Nainar.

AIR 1952 Mad 531 : 1952 MWN Cr 1 : 1952 MWN 53 : 1952-1 MLJ 161 : 1952 AWR (Sup) 28 : 65 ML W 441 : 1952 Cr LJ 1145.

——Power of Magistrate—Striking off proceedings.

A Magistrate shall cancel the order initiating the proceeding under S. 145, if he is satisfied at any stage of the case that no dispute likely to cause a breach of the peace exists, though these words are not expressly used in the section. But the sense is conveyed by the use of the word "exist" in it. 30 Cal 112; A I R 1925 Mad 1252; AIR 1924 Mad 795, Rel on; 30 Cal 155, Ref. (Suhrawardy and Graham, JJ.) Abdur Rahman v. Dinesh Haldar.

AIR 1929 Cal 328 : IR 1930 Cal 232 : 122 IC 296 : 33 CWN 399 : 31 Cr LJ 409.

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7. "Consider the effect of such evidence and take such further evidence as he thinks necessary."

——S. 145 (4)—Absence of party.

After entertaining the proceedings under S. 145 and calling for the written statements, even if one of the parties fails to produce any evidence, the Magistrate can act under S. 145 (4) and come to a decision one way or other. The law does not provide for dismissal of the proceedings on the ground that one of the parties is absent. (Thadani C. J. and Deka J.) Kamini Kumar Das v. Bhim Kanta Keot.

AIR 1953 Assam 198 : ILR (1952) 4 Assam 330 : 1953 Cr LJ 1589.

——S. 145 (4) — Consideration of documentary evidence.

It is true that in a proceeding under S. 145, the main point for decision is the actual possession, or where dispossession took place within two months before the drawing up of the proceedings, the main point is actual possession prior to the alleged date of dispossession. But the Magistrate in such a proceeding has to peruse the written statements put in by the parties who claim the right to possess the subject-matter of the dispute, and he has to consider the effect of all such evidence as may be produced by the parties respectively and so the Magistrate must consider and deal with the documentary evidence produced in the case. (Mitter and Sen JJ.) Bholanath Dhar v. Gour Gopal.

AIR 1953 Cal 777 : 58 Cal WN 11 : 1953 Cr LJ 1782.

——Magistrate ordering attachment of property under S. 146 — In revision case remanded and Magistrate ordered to take additional evidence and to come to some finding as to possession—On remand additional evidence taken but evidence given before remand not considered—Held, finding as to possession after remand could not be accepted as correct.

In a proceeding under S. 145, Magistrate having come to the conclusion that evidence of both parties was equally balanced, ordered attachment of property under S. 146. Upon revision, the matter was sent back to the Magistrate with a direction that, if necessary, he should allow the parties to adduce further evidence and should try to come to a finding as to which side was in possession. On remand, the Magistrate recorded evidence adduced by both parties, but while considering the evidence of possession he did not take into consideration the evidence of witnesses who had been examined before the order of remand:

Held that this was a very serious error and the finding of the Magistrate on remand as to possession could not, therefore, be accepted as correct. (Ray J.) Dulare Kumar v. Subans Kumar.

AIR 1947 Pat 175 : 1946 PWN 278 : 13 BR 539 : 231 IC 90 : 48 Cr LJ 683.

CRIMINAL P. C. (V of 1898), S. 145 — 7. "Consider the effect of such evidence.....as he thinks necessary"

——Proceeding under—Evidence to be relied on.

In proceedings under S. 145, Cr. P. C., it is safer to rely on documentary evidence than on oral evidence. (Lobo, C. J. and Thadani, J.) Kodanmal Bassarmal v. Emperor.

AIR 1945 Sind 110 : ILR (1945) Kar 78 : 1948 Sind Rul 19 : 221 IC 112 : 47 Cr LJ 78.

——Duty of weighing evidence regarding possession in proceeding under S. 145, is reserved purely for the trial court and the finding of the trial court is not open to interference in revision unless it is vitiated by error of law. (Misra, J.) Mahadeo Prasad v. Ram Saran.

AIR 1945 Oudh 12 : 46 Cr LJ 680.

——Ss. 145, 146—Proceeding to be decided on balance of evidence—Evidence of first party, although weak, yet preferable to evidence of second party—Magistrate should pass order in favour of first party.

In a proceeding under S. 145, Cr. P. C., it would not be proper to set up any absolute standard of proof and to say that evidence not up to this standard will not be acted on by the Court for the purpose of an order under that section. The proceeding under S. 145 can be decided on the balance of evidence and if the Magistrate can see his way to express an opinion that the evidence of one side is superior to the evidence on the other side, then he is entitled to and should, if possible, form a definite opinion on the question of fact who is in possession. An order under S. 146 attaching the property is a desperate remedy for cases in which the Magistrate finds it quite impossible to choose between the conflicting evidence adduced by the two sides. It would be regrettable if it were necessary to pass such an order when the first Court has been able to make up its mind in favour of one party. If the Magistrate thinks that the evidence for the first party, weak though it might be, is preferable to the evidence for the second party, it is the Magistrate's duty to give a decision in favour of the first party. (Rowland, J.) Nandkishore Singh v. Bigan Lohar.

AIR 1940 Pat 113 : 21 PLT 306 : 6 BR 81 : 12 RP 281 : 184 IC 817 : 41 Cr LJ 101.

——One party offering to give up claim on opposite party's taking special oath—Refusal to do so can be taken into consideration along with other evidence.

Where, in a proceeding under S. 145, one of the parties offers to give up his claim to property in dispute if the opposite party would take special oath but the opposite party refuses to do so the refusal, although it cannot be treated as anything conclusive, is yet a matter which the Court is entitled to take into consideration along with the other evidence and it is open to the trial Court to draw such inference from this con-

CRIMINAL P. C. (V of 1898), S. 145 — 7. "Consider the effect of such evidence.....as he thinks necessary"

duct of the party as it thinks fit. (Rowland, J.) Nandkishore Singh v. Bigan Lohar.

AIR 1940 Pat 113 : 21 PLT 306 : 6 BR 81 : 12 RP 281 : 184 IC 817 : 41 Cr LJ 101.

——Evidence given in another case — Consideration of.

The procedure of the Magistrate in considering the evidence given in another case as evidence in S. 145 case even though the other case was pending in his own Court as a Revenue Court is entirely unauthorised and illegal. (Zia-UL-Hasan, J.) Emperor v. Subhan.

AIR 1939 Oudh 15 : 40 Cr LJ 33.

——Duty of Magistrate.

In proceedings under S. 145, Cr. P. C., it is not open to the Magistrate to say that he is unable to come to a conclusion as regards possession on the evidence adduced by the parties and to order attachment of the property. He should take such further evidence as he thinks necessary after considering the effect of the evidence produced by the parties. (Pandrang Row, J.) Gopammal v. Nallammal.

1937 MWN 326.

——Absence of one of parties—Magistrate passing order without recording any evidence is irregular.

The Court is bound in the absence of one party to satisfy itself by examining the evidence rendered by the other that other party is entitled to an order.

In a case regarding possession of the property in dispute the counter-petitioner was absent at the final hearing of the case. The trying Magistrate passed order in favour of the petitioner without recording any evidence at all, upon the question of possession.

Held, that the Magistrate had no jurisdiction to found an order upon the mere absence of a party.

Held further, that the irregularity is material enough for the counter-petitioner to be entitled to have it set right. 6 CWN 925 and 12 CWN 771, Rel. on. (Curgenven, J.) Chinnapareddigaru v. Dasari Adigadu.

AIR 1929 Mad 847 : 120 IC 895 : 31 MLW 104 : 1929 MWN 708 : 2 M Cr C 321 : 1929 Cr C 615 : 31 Cr LJ 190.

——The admission of a document without its being duly proved but without any objection may be an illegality but it does not affect the jurisdiction of the Magistrate to pass the final order. (Kulwant Sahay, J.) Mt. Wahid-un-nissa v. Pichit Lal Miser.

AIR 1924 Pat 534 : 75 IC 538 : 24 Cr LJ 954.

——S. 145 (1)—Breach of the peace—Evidence of —Police report—Statement of parties.

Where there is no police report the statement of interested parties as regards the existence of a breach of the peace must be received with great caution, but if a Magistrate has reason to believe such a statement it cannot be said that he acts

CRIMINAL P. C. (V of 1898), S. 145 — 7. "Consider the effect of such evidence.....as he thinks necessary"

without jurisdiction in taking proceedings under the section. (Newbould and Suhrawardy, JJ.) Joymangal Singh v. Kanta Gope.

AIR 1924 Cal 444 : 72 IC 32 : 24 Cr LJ 304.

——An order based upon a written statement of one of the parties supported by his own evidence is not without jurisdiction, nor it is without jurisdiction, merely because the Magistrate does not accept the decision in previous case of rioting as to possession. (Kulwant Sahay, J.) Bhulan Raut v. Kummari Rai.

AIR 1924 Pat 509 : 75 IC 535 : 5 PLT 69 : 2 Pat LR Cr 104.

——Power of Magistrate—Sufficiency of evidence.

The Magistrate may take further evidence if he thinks it necessary to do so. But if on the evidence produced he is satisfied as to who is the party in actual possession he need not take further evidence. (Kulwant Sahay, J.) Bhulan Raut v. Kumari Rai.

AIR 1924 Pat 509 : 75 IC 535 : 5 PLT 69 : 2 Pat LR Cr 104.

——Consent—Enquiry under — Evidence — Agreement to dispense with oral evidence — Recent decree of Civil Court—Effect on Criminal Court.

As the Magistrate is required in disputes under S. 144, Cr. P. Code to come to a conclusion on the fact of actual possession at the date of order or 2 months prior to it, an agreement between the parties to get the case decided on documents or without adducing evidence of possession is outside the scope of the section. Where however there is a decree of a civil Court in execution of which possession has been recently delivered the Criminal Court is bound thereby. The Criminal Court must uphold a recent delivery of possession by the Civil Court. (Admai, J.) Maharaja Pratap Udai Nath Sahai Deo v. Bhaiain Sunderbas Koer.

AIR 1923 Pat 76 : 3 Pat LT 628 : 71 IC 999 : 24 Cr LJ 279.

——Evidence — Appreciation — Interference by High Court.

Pattas and kist receipts are evidence not merely of legal right but of possession also. Where the magistrate comes to a perverse conclusion on the question of possession after getting rid of the oral and the documentary evidence in the case, the High Court can interfere in revision. (Ramesam, J.) Thylayee Ammal v. Shrivangaroye Goundan.

AIR 1923 Mad 60 : 1922 MWN 629 : 16 MLW 497 : 31 MLT 202 : 43 MLJ 624 : 71 IC 228 : 24 Cr LJ 100.

——Enquiry— Finding as to possession —Finding based on evidence in another case.

Finding as to possession based on evidence in another case is not a finding based on legal evi-

CRIMINAL P. C. (V of 1898), S. 145 — 7. "Consider the effect of such evidence.....as he thinks necessary"

dence. (Kanaiya Lal, J. C.) Mirza Raza Hussain v. Mehdi Hasan.

AIR 1922 Oudh 256 : 10 OLJ 157 : 69 IC 268 : 25 OC 148 : 23 Cr LJ 684.

——Duty of Magistrate—Discussion of oral and documentary evidence necessary.

The judgment in a case under S. 145 should form the basis for a discussion of the entire evidence in the case both oral and documentary. Documents relating to possession cannot be ignored altogether. It depends upon the circumstances of each case whether the rejection of, or omission to consider documents or evidence would amount to refusal to exercise proper jurisdiction. (Jwala Prasad, J.) Hanuman Singh v. Sheo Chandra Singh.

AIR 1921 Pat 483 : 2 Pat LT 333.

——Documentary evidence.

Where in the absence of oral evidence the Court decided the case upon the documentary evidence, namely Record of Rights, the High Court will not interfere. (Jwala Prasad, J.) Pathak Jairam Singh v. Thakur Doman Singh.

AIR 1921 Pat 295 : 2 Pat LT 266.

——Duty of Magistrate.

On application under S. 145 a Magistrate's order passed on the enquiry and report of Zaildar alone, is wholly bad in law. (Abdul Raoof, J.) Yar Ali Shah v. Rahim Shah.

AIR 1920 Lah 114 : 57 IC 83 : 21 Cr LJ 563.

——Duties of Magistrate — Order of possession under.

Order of possession under S. 145 passed on the evidence of a person not called by either party is bad in law. (Shadi Lal, J.) Fateh Sher Khan v. Emperor.

AIR 1916 Lah 368 : 4 PR (Cr) 1916 : 33 IC 305 : 23 PWR (Cr) 1916 : 17 Cr LJ 129.

——Duties of Magistrate — Evidence of actual possession wanting—Further evidence necessary.

Where evidence of actual possession is wanting, a Magistrate acting under S. 145 should call in further evidence before passing final orders. (Holmwood and Sharfuddin, JJ.) Juthan Singh v. Ram Narain Singh.

AIR 1914 Cal 812 : 19 CLJ 356 : 18 CWN 700 : 22 IC 986 : 15 Cr LJ 202.

——Procedure—Magistrate's order on report without hearing evidence.

A Magistrate acting under S. 145 must hear the evidence before he passes orders and cannot act on the report of a subordinate officer to whom he has referred the matter for inquiry. (Rafique, J.) Sardha Prasad v. Pitambar Lal.

17 IC 409 : 10 ALJ 465 : 13 Cr LJ 777.

——Consent—No enquiry—Effect.

Order of the Magistrate under S. 145 without any inquiry as to possession is not ultra vires if the party against whom the order is made admits the possession of the other side. (Benson and

CRIMINAL P. C. (V of 1898), S. 145 — 7. "Consider the effect of such evidence...as he thinks necessary" Krishnaswami Aiyar, JJ.) Gangadharam Aiyar v. Sankarappa Naidu.

9 MLT 91 : 9 IC 285 : 12 Cr LJ 47.

——Non-observance of procedure under—Effect.

A final order passed by the magistrate without following the procedure laid down by Chap. 12, that is to say passed after examining only the putwaree is without jurisdiction. (Tudball, J.) Bitak Rai v. Bisheshar Rai.

5 Ind Cas 128 : 11 Cr LJ 47.

——Disputed possession— Order of Magistrate without judicial determination—Validity.

An order made by a Magistrate in a case of disputed possession, to maintain one side in possession, and to restrain the other side, without any judicial determination of the fact of possession, is illegal. As to the question of possession, the law contemplates the judicial decisions of the Magistrates arrived on proper materials in regular proceedings and not their opinions. (Wilson and Porter, JJ.) Gopinath Paryah v. Empress.

2 CLJ 555 : 10 CWN 82 : 3 Cr LJ 169.

8. Continuation of proceedings by or against legal representatives—Sub-Section (7).

——Dropping of proceeding upon death of party.

An order dropping proceedings merely because one of the parties had died is ultra vires and fresh proceedings are without jurisdiction. In such a case Sub-S. (7) empowers the magistrate to cause the legal representatives of the deceased to be made parties and continue the proceedings. (Patterson and Guha, JJ.) Misil Mirdha v. Abdul Ramim.

AIR 1934 Cal 787 : 36 Cr LJ 303.

——Abatement of revision application.

Right to carry on proceedings under S. 145 conferred by Sub-S. (7) relates only to the proceedings before the magistrate and not to revision applications which abate upon the death of the applicant. (Martineau, J.) Krishen Deo Singh v. Hari Singh.

AIR 1919 Lah 236 : 23 PR (Cr) 1919 : 29 Cr LJ 720.

——Cl. (7) of S. 145 is applicable only to proceedings under S. 145 and not to revisional orders. (Oldfield and Krishnan, JJ.) Subba Raje v. Rambhadru Raju.

AIR 1917 Mad 664 : 4 MLW 440 : 35 IC 821 : 17 Cr LJ 389.

——Parties —Legal representatives —Bringing on record.

The Cr. P. C., does not provide for bringing representatives of accused parties on record. All that the Court has to see is that the application has not abated by reason of the death of one of the parties. (Sadasiva Aiyar and Spencer, JJ.) Subbiah v. Chokkalinga.

AIR 1915 Mad 92 : 16 MLT 248 : 27 MLJ 613 : (1914) MWN 790 : 25 IC 1004 : 15 Cr LJ 676.

CRIMINAL P. C. (V of 1898), S. 145

9. Conversion of proceedings.

——Ss. 145 and 107—Concurrent proceedings under are most inadvisable though not illegal.

See ibid, S. 107.

AIR 1953 Vind Pra 14 : 1953 Cr LJ 975.

——Ss. 145 and 107 — Composite proceedings under are illegal.

See ibid, S. 107.

AIR 1953 Raj 199 : 1953 Cr LJ 846.

——Ss. 145 and 107 — Application under S. 107 — Power to proceed under S. 145.

See ibid, S. 107.

AIR 1953 All 259 : 1953 Cr LJ 628.

——Combination of proceedings under Ss. 107 and 145 — Composite order under Ss. 107 and 145 is illegal.

See Cr. P. C., S. 107.

AIR 1952 Raj 100 : 1952 Cr LJ 1031.

——Ss. 145 and 107—Application under Ss. 107 and 145—Proceedings under S. 107 started—Conversion of proceedings by successor without fresh complaint—Legality.

An application under S. 145, Cr. P. C., was made to the District Magistrate on the ground that there was a dispute concerning certain land. The District Magistrate instead of keeping the application on his file forwarded it to a Sub-Inspector of Police for inquiry and report. The Sub-Inspector after making an inquiry filed a fresh application under Ss. 107 and 145 to a Sub-Divisional Magistrate having jurisdiction and attached to it the previous application of a party under S. 107 and took evidence but was subsequently transferred. The successor Magistrate after considering the application afresh converted the proceedings under S. 107 into one under S. 145, drew up a preliminary order and attached the subject of dispute. On revision the District Magistrate set aside the order on the ground that action under S. 145 could not be taken except upon a fresh complaint under S. 145.

Held that the procedure adopted by the District Magistrate on the first application was wrong. He should have kept the application pending on his file and directed the police to make an enquiry and report.

Held further that the order of the District Magistrate cancelling the order under S. 145 was unjustified. Though action under S. 107 was taken by the previous Sub-Divisional Magistrate his successor could convert the proceedings into one under S. 145 without any fresh application under S. 145 and a fresh report. (Nawal Kishore, C. J.) Thakur Sher Singh v. Thana and others.

1951 RLW 14.

——Proceedings originally started under S. 145 can be converted into one under S. 107— Converted

CRIMINAL P. C. (V of 1898), S. 145—9. Conversion of proceedings

proceedings are not without jurisdiction : 39 Cal 150 and AIR 1942 Pat. 331, Foll. (Hidayatullah, J.) Shamrao v. Emperor.

AIR 1948 Nag 76 : ILR (1947) Nag 706 : 1947 OA Sup 106 : 1947 NLJ 360 : 1947 AWR Sup 106 : 49 Cr LJ 61.

——Proceedings under S. 144 on report of the police—Both parties prohibited from going on the land in dispute— Deputy magistrate in his report recommending proceedings under S. 145, since there was no imminent apprehension of breach of the peace but there was likelihood of it, just before ordering cutting of crop — Held that a dispute existed such as was likely to cause a breach of the peace, unless proceedings under S. 145 were taken. (Manohar Lall and Chatterji, JJ.) Shibnarayan Das v. Satyadeo Prasad.

AIR 1943 Pat 44 : 44 Cr LJ 25.

——There may be occasions where an order is first appropriately passed under S. 144 and the proceedings afterwards converted into one under S. 145 in order to pass an even more appropriate and permanent order. (Dhavle, J.) Bhuneshwar Prasad v. Rammoy Roy.

AIR 1940 Pat 492 : 6 BR 428 : 12 RP 588 : 187 IC 139 : 41 Cr LJ 417.

——Chaps. VIII (S. 107), XII—Proceedings under Chap. VIII instituted by one Magistrate—His successor, if can keep them pending and institute proceedings under Chap. XII.

Where one Magistrate has instituted proceedings under Chap. VIII, Criminal P. C., his successor can order these proceedings to be kept pending and institute proceedings under Chap. XII which he considers more appropriate to the facts and circumstances of the case as they exist at the time when he makes the order. In this matter, the discretion of the Magistrate is not restricted. (Davis, J. C. and Mehta, A. J. C.) Lachmandas Sanwaldas v. Sahibdino Budho Chajra.

AIR 1936 Sind 147 : 9 RS 59 : 29 SLR 443 : 164 IC 942 : 37 Cr LJ 1036.

——A case under S. 107, Criminal P. C., can be proceeded under S. 145 if facts disclose likewise. (Burn, J.) Kana Kuna Ramaswamy Pillai v. Kunnia Kundiyan alias Suppiah Pillai.

1935 MWN 813.

——Where a magistrate issues notice under S. 145 he cannot proceed under S. 147. (Addison, J.) Turab Alikhan v. Shromani Gurdwara Prabandhak Committee.

AIR 1933 Lah 145 : 34 Cr LJ 616.

——If it is probable that the parties to a land dispute will break the King's peace before the decision of the Civil Court can be given, that danger can be guarded against by an order under S. 107 in an apppropriate case. (Marten and Coyajee, JJ.) Mallappa, In re.

AIR 1926 Bom 213 : 95 IC 62 : 28 Bom LR 488 : 27 Cr LJ 734.

CRIMINAL P. C. (V of 1898), S. 145—9. Conversion of proceedings

——Power of Magistrate — Conversion of proceedings.

Where proceedings are instituted under S. 145 on the basis of a police report which states that there is an imminent risk of a breach of the peace, but the Magistrate afterwards discovers that the question at issue is not one of possession under S. 145, but is one as to rights falling under S. 147, he can convert the proceedings into proceedings under S. 147. (Greaves and Panton, JJ.) Anath Bandhu Nundy v. Wahid Ali Pramanic.

AIR 1925 Cal 1022 : 85 IC 654 : 26 Cr LJ 558.

——Ss. 145 and 439—Security for keeping peace—Dropping of proceedings under S. 145 and initiation of proceedings under S. 107.

By an order of a Magistrate, proceedings under S. 145, Cr. P. Code were dropped because proceedings under S. 107 would meet the case and because the latter were pending. Held, that the High Court would not interfere in revision with the order. (Chaudhuri and Newbould, JJ.) Jharu Khan v. Sarada Charan Sikdar.

AIR 1920 Cal 104 : 54 IC 614 : 21 Cr LJ 134.

——Ss. 145 and 107—Security proceedings— Jurisdiction to drop proceedings under S. 107 and to start under S. 145 — Termination of proceedings under S. 145.

A Magistrate taking cognisance of a case under S. 107 can drop the proceedings under that section, and proceed under S. 145. Where there is a clear dispute as to possession the proper section to proceed under is S. 145, which is more effective and less prejudicial to the contending parties. A proceeding under S. 145 can only be terminated by decision upon the evidence under S. 145 (5) Cl. 4. Proceedings can be dropped under S. 145 (5) on the only ground mentioned therein. (Jwala Prasad, J.) Himmat Mian v. Emperor.

AIR 1918 Pat 500 : 46 IC 296 : 19 Cr LJ 712.

——Ss. 145 (3) and 144—Breach of peace—Proceedings under S. 144 — Conversion of into S. 145 — No fresh proceedings—Mere irregularity.

Proceedings were initiated under S. 144 of the Code but subsequently on the day fixed for hearing the Magistrate converted them into proceeding under S. 145 in the presence of the parties who thereafter filed their written statements and adduced evidence in support of this case. No fresh notice of proceedings was served on the parties. Held, that the parties having been cognisant of the case and having filed and hotly contested throughout the Magistrate's action was not illegal. (Imam, J.) Chandari Ahir v. Raja Ram Singh.

AIR 1918 Pat 481 : 4 Pat LW 234 : 44 IC 748 : 19 Cr LJ 396.

——Ss. 145 and 107—Duties of Magistrate— Security for keeping peace —Initiation of proceedings under S. 107—Conversion into one under S. 145.

CRIMINAL P. C. (V of 1898), S. 145 —9. Conversion of proceedings

Where a proceeding is started under S. 107 of the Cr. P. Code and evidence is taken but the Magistrate subsequently converted the proceedings into one under S. 145, he must call for written statement of the parties and record evidence under the latter section. Failure to do so vitiates an order under S. 145. (Imam, J.) Sahdeb v. Juman Jolaha.

AIR 1918 Pat 625 : 4 Pat LW 195 : 44 IC 336 : 19 Cr LJ 320.

——Ss. 145 and 107—Security for keeping peace—Simultaneous proceedings—Legality.

There can be no two simultaneous proceedings on the same materials one under S. 145 the other under S. 107. If there are, then the proceedings under S. 107 should be set aside. (Chapman, J.) In re Udit Narain.

AIR 1917 Pat 632 : 1 Pat LW 546 : (1917) Pat HCC 216 : 39 IC 996 : 18 Cr LJ 628.

——Ss. 145 and 107—Security for keeping peace—proceedings under S. 145—Whether order under S. 107 can be made.

An order under S. 107 cannot be made on the termination of proceedings under S. 145. (Walsh, J.) Sri Deo v. Emperor.

AIR 1916 All 237 : 14 ALJ 794 : 36 IC 495 : 17 Cr LJ 527.

——Ss. 145, 147—Notice under S. 147—Jurisdiction to make order under S. 145.

Where upon a notice under S. 147, an objection was taken that the cases did not fall under S. 147, but the Magistrate, without deciding that the case fell under S. 145 and without giving notice to the parties of his intention to proceed under S. 145, passed an order purporting to be under S. 145: Held, that the action of the Magistrate in passing an order under S. 145, without first making an order under the first paragraph of that section was without jurisdiction. (Munro and Sankaran Nair, JJ.) Subramaniya Pillai v. Sannasia Pillai.

5 MLT 103 : 19 MLJ 18 : 2 Ind Cas 310 : 9 Cr LJ 565.

——Prohibitory order under S. 144 against landlords—Tenants not parties — Subsequent proceedings under S. 145—Finding that landlords were in possession through their tenants.

The fact that a prohibitory order had been framed against the landlords in proceedings under S. 144, to which tenants were not parties, does not preclude the court in finding subsequently in proceedings under S. 145 that the landlords were in possession through their tenants. (Sharfuddin and Coxe JJ.) Kishori Lal Roy Choudhary v. Srinath Roy.

13 CWN 530 : 36 C 370 : 1 Ind Cas 817 : 9 Cr LJ 899.

10. Costs. See also Cr. P. C. S. 148.

——Order for compensation.

CRIMINAL P. C. (V of 1898), S. 145—10. Costs

Compensation on account of loss suffered due to the inability of the opposite party to harvest crop by reason of proceedings under S. 145, cannot be awarded to the opposite party in proceedings under S. 145—Only costs can be awarded. (Ram Labhaya J.) Raghunath Saran v. Manan Singh.

AIR 1949 Assam 48 : 50 Cr LJ 1002.

——Ss. 145, 148 (3)—Fact that witnesses are examined locally, whether disentitles party to costs properly incurred.

Witnesses may be examined locally to avoid expense but that does not mean that no expense is properly incurred at all so as not to award costs to any party. (Dhavle, J.) Kunjo Mandal v. Sarju Ram Marwari.

AIR 1939 Pat 206 : 20 PLT 164 : 5 BR 539 : 11 RP 573 : 181 IC 176 : 40 Cr LJ 538.

——Award of costs should be either contemporaneous with or made within a reasonable time after disposal of the case. (Lakshmana Rao, J.) Duggapu Nariah v. Krishnamurthi.

1938 MWN 1011 : 48 MLW 444 (1).

——Successful party should be awarded costs.

In proceedings under S. 145, Cr P. C., the Magistrate has discretion to award costs, but where he has given no reason for not exercising that discretion in favour of the party who was declared to be in actual possession of the land after a lengthy trial, it is proper that he should be given a reasonable amount of costs.

Where one of the parties to a proceeding under S. 145, Cr. P. C., are some managers of a certain limited company, though the company is the real contestant, the costs awarded against them should be realised either from the managers or from the company itself. (Madan, J.) Udhab Chandra v. Sideswar Prasad.

AIR 1937 Pat 559 : 4 BR 43 : 18 PLT 714 : 10 RP 224 : 171 IC 604 : 38 Cr LJ 1099.

——Question of costs—Whether to be treated as a separate issue—Judicial determination of the question—Necessity of.

There is no necessity to treat the question of costs as a separate issue upon which a separate judgment must be given. Of course, no order for costs must be made unless this question has been determined judicially and upon proper materials. If the Magistrate, when giving his decision on the merits, there and then makes an order for costs, the party who has been ordered to pay them, may, at that time, raise arguments in order to induce the Magistrate not to inflict that order upon him, and the matter will then be decided after hearing any such argument.

If, however, the Magistrate reserves judgment without mentioning at any time when the parties are before him that he intends to make an order for costs against any of them, it is his duty to give notice to any party against whom he intends to make such an order in order that he may have

CRIMINAL P. C. (V of 1898), S. 145—10. Costs

an opportunity of placing before the Magistrate arguments to induce him not to make the order. (Lort-Williams and McNair, JJ.) Devendra Nath v. Dhanmoni Dassi.

AIR 1934 Cal 95 : 6 RC 371 : 37 CWN 849 : 147 IC 817 : 35 Cr LJ 489.

——Ss. 145, 148 (3)—Order for costs, if incidental to order for possession—Magistrate's failure to make—High Court's power to pass in revision.

An order for costs under S. 148 (3), Cr. P. C., is an order incidental to an order for possession under S. 145, and where in proceedings under S. 145, Cr. P. C., the Magistrate who passed the decision has failed to make any order in regard to the costs of the proceedings, under Sub-S. (3), S. 148, Cr. P. C., the High Court in revision has power to make an order for the payment of the costs of such proceedings. (Page, C. J., Das and Dunckley JJ.) Ma Mya Khin v. Maung Po Htwa.

AIR 1933 Rang 288 : 6 R Rang 64 : 11 Rang 361 : 145 IC 837 : 35 Cr LJ 1 (FB).

——Ss. 145, 386 (b)—Costs awarded in proceedings under S. 145—Attachment of property—Claim that property is joint—Procedure to be adopted.

Where costs were awarded to A against B in proceedings undr S. 145, Criminal P. C., and a certain property was ordered to be sold in execution of such costs and C made claim to the property as being the joint family property of himself and B:

Held, (i) that as there was dispute as to whether the property was the joint property of B, the better method would be to proceed under Sub-Cl. (b) of S. 386, Criminal P. C.;

(ii) that the share of B in the joint property could be attached and sold in execution. (Wort, and Scroope, JJ.) Sahdeo Singh v. Ram Kishun Singh.

AIR 1932 Pat 212 : 13 PLT 235 : Ind Rul (1932) Pat 180 : 138 IC 310 : 33 Cr LJ 671.

——Power to award reasonable amount as costs.

In a proceeding under S. 145, Criminal P. C., it is extremely difficult to prove the exact sum spent in costs and the Court may very well use its discretion in awarding an amount which it considers reasonable. (Pullan, J.) Brij Pal Singh v. Ram Naresh Singh.

AIR 1932 All 325 : Ind Rul (1932) All 70 : 135 IC 246 : 33 Cr LJ 157.

——In proceedings under S. 145, Criminal P. C., the value of the property in dispute cannot by itself be taken as a fair test of the costs which should be awarded. (King, J.) Kallu v. Bashiruddin.

AIR 1931 All 3 : (1930) ALJ 1504 : Ind Rul (1931) All 141 : 53 All 172 : 129 IC 269 : 32 Cr LJ 372.

——Costs may be awarded where the magistrate permits withdrawal of proceedings. (Rupchand Bilaram and De Souza, A. J. Cs.) Relumal v. Pherumal.

AIR 1928 Sind 193 : 111 IC 441 : 22 SLR 386 : 29 Cr LJ 857.

——It is competent to the High Court, in its criminal revisional jurisdiction, to award costs of a revisional proceeding under S. 145. (Fawcett and Madgavkar, JJ.) Bai Jiba v. Chandulal.

AIR 1926 Bom 91 : 94 IC 709 : 27 Bom LR 1353 : 27 Cr LJ 661.

——The High Court has no power to award costs incurred before it on the hearing of a Criminal Revision against an order passed under Chapter XII (Ss. 145-148). AIR 1922 Mad 502 (FB) Foll. (Spencer, Offg. C. J., Kumaraswami Sastri and Krishnan, JJ.) Veerappa v. Avudayammal.

AIR 1925 Mad 433 : 86 IC 147 : 48 Mad 262 : 21 MLW 688 : 48 MLJ 106 : 26 Cr LJ 707 (FB).

——Costs.

While awarding costs under S. 148, the Magistrate should ascertain the actual expenditure of the successful party. The High Court cannot interfere with the order of costs either under S. 439, Cr. P. C., or S. 107 of Govt. of India Act, 1915. (Roe and Jwala Prasad, JJ.) Namdhari Singh v. Ramtahal Rai.

AIR 1916 Pat 396 : 35 IC 524 : 17 Cr LJ 348.

——Costs ordered by one Magistrate — If another can assess.

The successor of a Magistrate who ordered costs under S. 145 has power to assess the amount thereof. (Sadasiva Aiyar and Spencer, JJ.) Mohammad Ali v. Emperor.

AIR 1914 Oudh 272 : 17 OC 311 : 25 IC 1005 : 15 Cr LJ 677.

——S. 145 (3)— Costs— Original order directing payment of costs—Amount assessed in separate order.

Where a Magistrate does not fix the amount of costs while ordering costs under S. 145, it is not illegal for him to assess the amount by a separate order after hearing both parties. (Ayling, J.) In re. Medapati Ammireddi.

14 MLT 195 : (1913) MWN 771 : 21 IC 170 : 14 Cr LJ 570 (2).

——Order for costs—Magistrate competent to pass the order—Proper time at which order is to be made.

See ibid, S. 148.

11 Cr LJ 335 (Oudh).

11. "Crops or other produce subject to speedy and natural decay"—Sub-Section (8).

——Ss. 145 (8), 517—Order under S. 145 (8), for disposal of cut crop though without jurisdiction—Order under S. 517 can be legally passed (Narasimham, J.) Jalumuru Kamaraju v. Kenguva Suryanarayana.

AIR 1953 Orissa 99 : ILR (1951) Cut 576 : 18 Cut LT 207 : 1953 Cr LJ 737

CRIMINAL P. C. (V of 1898), S. 145 — 11. "Crops or other produce subject to speedy and natural decay"—Sub-s. (8)

——S. 145 (8), (4) — S. 145 (8), is independent of S. 145 (4), Proviso—Land with crop attached—Magistrate can deal with crop apart from S. 145 (8).

Section 145 (8) is quite independent of the proviso to S. 145 (4). Sub-Section (8), is a special provision for cases where there is crop or other produce which is subject to speedy and natural decay. There may be cases in which there is no attachment under the proviso to Sub-S. (4) and yet some order of the Magistrate is necessary if there is any crop or other produce of the land which is subject to speedy and natural decay. Sub-Section (8) is primarily intended to provide for such cases. If the land with the crop is attached, the Magistrate has full power to deal with the crop apart from the provisions of Sub-S. (8). (Manohar Lall and Chatterji, JJ.) Nandkishore Prasad v. Radhakishun.

AIR 1943 Pat 124 (125, 126) : 21 Pat 743 : 9 BR 231 : 15 RP 292 : 205 IC 429 : 44 Cr LJ 414.

——Molasses form produce of land and being subject to decay can be ordered to be sold.

Molasses can be treated as the produce of the factory within the meaning of S. 145 (8) where the land about which there is dispute consists of factory building including vats. A sugar mill produces molasses. The word "produce" is not necessarily confined to what is grown on the ground. It refers also to a finished article or semi-finished article made from raw material. Where, therefore, the produce is subject to speedy and natural decay, the Magistrate's order for its sale is justified and the Magistrate has jurisdiction to pass such order. The sale proceeds should be made over to persons in possession of molasses, only if they give reasonable security. Security need not be in cash. Recognized Government securities as War Bonds are sufficient. (Stuart, C. J.) Nihal Chand v. Jai Ram

AIR 1930 Oudh 165 : 1930 Cr C 257 : 6 OWN 1070 : 124 IC 441 : 5 Luck 462 : 31 Cr LJ 688.

——Power of Magistrate—Sale proceeds.

The sale proceeds of crops standing on the lands when the lands were attached in proceedings may be ordered to be kept in deposit in the Court until one party or the other obtained an order in his favour. (Spencer, J.) Suryanarayana v. Ankineed Prasad.

AIR 1924 Mad 795 : 81 IC 626 : 20 MLW 58 : 35 MLT 68 : 34 MLT 248 : 47 Mad 713 : 46 MLJ 565 : 25 Cr LJ 978.

12. "Declare that such person is entitled to possession"—Sub-Section (6).

See also Note 36. Order under the section.

——Declaration of landlord's possession.

The declaration that one of the parties was entitled to possession should be made exclusively to the landlord without taking into consideration that the tenant was in actual possession. (Bala Krishnaiya, J.) Subba Rao v. B. Venkata Rao.

AIR 1953 Mys 27 : ILR (1953) Mys 309 :1953 Cr LJ 644.

CRIMINAL P. C. (V of 1898), S. 145 — 12. "Declare that such person is entitled to possession"—Sub-s. (6)

——Dispute between landlord and tenant.

In a dispute between the landlord and tenant, the Court is not precluded from declaring the possession of one landlord against the rival landlord. Though such possession in favour of the landlord is declared the tenant cannot be deprived of the actual possession in spite of the fact that he has attorned himself to the rival landlord. (Balakrishnaiya, J.) Subba Rao v. Venkata Rao.

AIR 1953 Mys 27 : ILR (1953) Mys 309 :1953 Cr LJ 644.

——Order for joint possession whether can be made.

An order under S. 145 can only be passed in favour of a party in exclusive possession of the property. No declaration of joint possession can be made under that section. (Wanchoo C. J. and Bapna, J.) Nahar Singh v. State.

AIR 1951 Raj 156 : ILR (1951) 1 Raj 265 : 52 Cr LJ 1209.

——Order declaring possession in favour of person who had disclaimed interest in disputed properties is bad as a whole.

Where in a proceeding under S. 145 some members of one party disclaim any interest in the disputed properties but the Magistrate while declaring possession of that party also declares possession in favour of such members, the order of the Magistrate as a whole is vitiated. (Ray, J.) Dulare Kumar v. Subans Kumar.

AIR 1947 Pat 175 : 1946 PWN 278 : 231 IC 90 : 13 BR 539 : 48 Cr LJ 683.

——Person claiming to be in possession of entire village—He cannot be declared to be entitled to possession of undivided share only. (Lakshmana Rao, J.) Muttuswami Thevar v. Rajakumar B. Rajaram Pandian.

AIR 1940 Mad 904 : 42 Cr LJ 67.

——Applicant found in actual possession of land in dispute— Whether can be directed to restore cemeteries to their old state and allow Muhammadans to have access to them.

It is beyond the powers of a Sub-Divisional Magistrate to give a direction under S. 145, Criminal P. C., requiring the applicant who is found to be in actual possession of the land in dispute to restore the old cemeteries to their old state and allow access to Mussalmans if they should desire to go near the cemetery to invoke the blessing of God. (Lakshmana Rao, J.) Balakrishna Reddiar v. Jalaluddin Sahib.

AIR 1939 Mad 791 : 1939 MWN 737 (1) : 12 RM 452 : 50 MLW 338 (2) : (1939) 2 MLJ 111 : 184 IC 451 (1) : 41 Cr LJ 18.

CRIMINAL P. C. (V of 1898), S. 145—12. "Declare that such person is entitled to possession" — Sub-s. (6)

——It is not the duty of the Court in proceedings under S. 145 to declare who is entitled to possession. The declaration must be as to who is actually in possession and entitled to remain in possession till a decision is given by a competent Court. (Adami, J.) Subda Santal v. Khushal Santal.

95 IC 320 : 1926 PHCC 160 : 7 PLT 873 : 27 Cr LJ 784.

——Under S. 145 a Magistrate has jurisdiction to find possession but not the mode of possession or how the possession is to be exercised, and any order so determining the mode of possession is without jurisdiction. (Suhrawardy and Graham, JJ.) Rahini Nandan Chaudhury v. Jadunandan Chaudhuri.

AIR 1926 Cal 1022 : 30 CWN 873 : 97 IC 73.

——The mere fact that some of the parties file a compromise does not prevent the Magistrate from putting such parties into possession although had the compromise been filed by all the parties and had there been no longer any dispute, it might be held that the Magistrate's jurisdiction had ceased and that he was only empowered to cancel the proceedings under cl. 5 of section 145. (Kendall and Pullan, A. J. Cs.) Rani Abadi Begam v. Mirza Ahmad Mirza Beg.

AIR 1925 Oudh 190 : 11 OLJ 757 : 82 IC 691.

——Easement.

On a proceeding under S. 145 a Magistrate can not only award possession of the land in dispute, but also grant a right of way over it to one of the parties before him. (Macleod, C. J. and Shah, J.) Amarsang Shivasangji, In re.

AIR 1924 Bom 452 : 86 IC 404 : 48 Bom 512 : 26 Bom LR 436 : 26 Cr LJ 772.

——Duties of Magistrate—Scope.

It is the duty of the Magistrate to complete the inquiry and to pass final orders under S. 145, Cr. P. C., where proceedings have once been started under it and a preliminary order passed. (Ramesam, J.) Virappa v. Kathayee Ammal.

AIR 1923 Mad 180 (2) : 16 LW 592 : 71 IC 112 : 24 Cr LJ 64.

——Ss. 145 and 537— Duty of Magistrate— Possession case—Judgment—Contents of.

A magistrate after holding an enquiry under S. 145 Cr. P. Code instead of pronouncing a judgment with reasons for his conclusion merely passed an order in these terms "counter petitioner is declared to be put in possession of the lands described hereunder ; fill up schedule form accordingly". A printed form was filled up declaring counter petitioner to be in possession.

Held, that the order of the magistrate was without jurisdiction and that he ought to have written a Judgment giving a finding as to the possession of the property on the date of the preliminary order. 18 M 41; 49 C 187 Ref. (Ven-

CRIMINAL P. C. (V of 1898), S. 145 — 12. "Declare that such person is entitled to possession" — Sub-s. (6)

katasubba Rao, J.) Peria Subba Goundan v. Sinha Subbayya Goundan.

AIR 1923 Mad 142 : 45 MLJ 56 : 16 LW 701 : 31 MLT 382 (HC) : 69 IC 158 : 23 Cr LJ 670.

——The final order ought to declare the party in whose favour possession is declared. A mere warning to the opposite party not to interfere with the possession of the other is not enough. (Jwala Prasad J.) Khubi Singh v. Darbari Mahton.

AIR 1921 Pat 176 : 2 PLT 267 : 1921 Pat (HCC) 167 : 62 IC 177 : 22 Cr LJ 481.

——Joint possession.

An order declaring that the 1st party is in possession of one third of the disputed lands and that the 2nd party is in possession of the rest, is not proper. An order under S. 145 should be merely to declare whom the Magistrate finds to be in actual possession of property in dispute. No proceedings ought to be taken where parties are in joint possession although they hold specific portions therein. (Dass J.) Jogeswar Das v. Trilochan Das.

AIR 1920 Pat 835 : 4 Pat 479 : 21 Cr LJ 224.

——S. 145 (6)—Duties of Magistrate—Lands not the subject of dispute—Jurisdiction of Magistrate.

In proceedings under S. 145, Cr. P. C. a Magistrate has no jurisdiction to declare that a land not in dispute between the parties is in the possession of a person not a party to the proceeding but who has been directed by the Magistrate to come in only for a limited purpose under S. 145 (5). If he makes such an order he exceeds his jurisdiction. (Chitty and Smither, JJ.) Radhamohan Rai v. Naimuddi Molla.

AIR 1918 Cal 117 : 45 IC 845 : 19 Cr LJ 653.

——Declaring possession of lands not claimed—Interference when question of jurisdiction involved.

Making order declaring possession of property not claimed is not a defect of jurisdiction. The case was sent back to the Magistrate to see whether in fact any error had been committed and that if so committed it was for him to correct it. (Chitty and Richardson, JJ.) Gagan Chand Naskar v. Peary Mohan Naskar.

AIR 1918 Cal 472 : 42 IC 723 : 18 Cr LJ 995.

——S. 145 (6)—Order as to possession.

An order as to possession subject to reservations is not forbidden by Cl. (6) of S. 145, e. g., upholding one party's possession of a temple and directing that he should allow the other party to enter it and perform puja there. If a dispute is in fact for possession of a temple and the right to perform puja therein is only a portion of the larger relief claimed, a Magistrate can deal with that portion only. (Ayling, J.) Payaniyandi Pandaram v. Palaniappa Thevan.

AIR 1917 Mad 840 : 34 IC 651 : 17 Cr LJ 235.

——Powers of Magistrate—Police forcibly delivering possession order to the complainant.

CRIMINAL P. C. (V of 1898), S. 145 — 12. "Declare that such person is entitled to possession" — Sub-s. (6)

Neither under S. 145 nor under S. 147 is a Magistrate competent to order the Police to deliver possession of a house to the complainant and to instruct the accused not to interfere with the complainant's possession until he gets a decree in his favour. (Knox, C. J.) Sheorani v. Baij Nath.

AIR 1916 All 304 : 14 ALJ 146 : 33 IC 625 : 17 Cr LJ 145.

——S. 145 (3)— Inconsistent order— Finding that one party is in possession of whole of disputed land— Order that only portion should be in the possession of that party—Jurisdiction.

Where in a proceeding under S. 145 of the Code the Magistrate found that one party was in possession of disputed land but nevertheless directed that some portion should remain intact and the other portion only should be in the possession of that party. Held that the order was without jurisdiction. (Coxe and Chatterjee, JJ.) Asit Mohan Ghose v. Sarat Chandra Ghose Moulik.

17 CWN 793 : 20 IC 215 : 14 Cr LJ 391.

——Possession—Removal of superstructure.

All that a Magistrate can do under S. 145 is to maintain possession after due enquiry in strict compliance with its provisions. He cannot remove any superstructure on the disputed land and is not concerned with the question of title. (Beadon, J.) Bogha v. Emperor.

6 PLR 1913 : 2 PWR (Cr) 1913 : 18 IC 890 : 14 Cr LJ 138.

——Decision as to method of possession by persons jointly interested —Jurisdiction of Magistrate.—A Magistrate though he can decide as to which of the parties is in possession has no jurisdiction to decide the method by which the possession is to be exercised by the parties jointly interested in the subject-matter of the dispute or the agency by which the person in possession is to collect the profits. (Coxe and Ryves, JJ.) Akaloo Chandra Das v. Mohesh Lall.

4 Ind Cas 696 : 36 C 986 : 11 Cr LJ 28.

——Execution of the final orders—Magistrate's power.

There is no specific provision in the Code authorising a Magistrate to take proceedings in the nature of execution after passing orders under S. 145. (Coxe and Ryves, JJ.) Kumar Ronendra Narain Roy v. Kishori Lal Roy Chowdhari; Kumar Ronendra Narain Roy v. Raja Sreenath Roy.

14 CWN 78 : 5 Ind Cas 40 : 11 Cr LJ 26.

——Order in respect of crops reaped.

An order under section 145 (c) cannot be passed in regard to crops which, though standing on the land at the time proceedings were taken under section 145 had been attached and reaped by direction of the Court at the time of passing the order and had become movable property. (Nan-

CRIMINAL P. C. (V of 1898), S. 145—12. "Declare that such person is entitled to possession"— Sub-s. (6)

jundayya O. C. J. and Chandrasekhara Aiyar, J.) Siddamma v. Devajamma.

12 MCCR 116 : 9 Cr LJ 339.

——Division of crops.

A Magistrate dealing with a case under S. 145 cannot order division of the crops on the land. The party declared to be in possession of the disputed land is entitled to the crops attached under S. 145 (4). (Mitra and Caspersz, JJ.) Ram Narain Sahu v. Kailash Singh.

8 CLJ 242 : 8 Cr LJ 387.

——Both parties found to be in possession of portions of land—Power to maintain their possession.

Where the parties to a proceeding under S. 145, are found to be in possession of portions of the disputed land and the possession of the one is not likely to interfere with the enjoyment of the other party's possession, the Magistrate can in the exercise of the jurisdiction vested in him under S. 145, maintain both the parties in possession of their respective portions. (Brett and Gupta, JJ.) Kangali Das Bairagi v. Muti Lal Bagdi.

11 CWN 743 : 5 Cr LJ 490.

——In a proceeding under S. 145, the magistrate cannot direct that a bundh which was in dispute should be removed and that one of the parties should pay to the other compensation for damage done to crops as well as costs in the case. (Henderson and Geidt, JJ.) Prayag Mahaton v. Gobind Mahaton.

32 Cal 602 : 9 CWN 862 : 2 Cr LJ 552.

——Boundary marks, by means of pillars set up in proceeding under S. 145 Cr. P. C.—Removal of.

The authority of the public servant, referred to in S. 434, I.P.C., must be understood to mean the lawful authority of a public servant. Under S. 145, Cr. P. C., a Magistrate has no authority, to order the property, the subject of dispute, to be demarcated by boundary pillars, defining the limits of the possession of the respective parties. A person removing such boundary marks is not liable to be convicted under S. 434, I. P. C. (Banerji, J.) Rameshar v. King Emperor.

27 A 300 : 1 ALJ 619 : 1904 AWN 264 : 1 Cr LJ 991.

13. Delegation of Enquiry.

See Note 49.—Reference to arbitration and compromise.

14. Dismissal for default.

See Note (5).—"Attend his court."
and Note (33).—Nature of proceedings.

15. "Dispute," meaning of.

See also Note 45.—Prior decision of civil, criminal or revenue court.

——Dispute between rival landlords.

Where the tenant who had the tenancy has not surrendered possession to his landlord, the claim to have attorned himself to a third person does

CRIMINAL P. C. (V of 1898), S. 145—15. "Dispute", meaning of

not make the tenancy under previous landlord cease to operate. The dispute thus between rival landlord for the benefits of a tenancy can be maintained. (Balakrishnayya, J.) Subba Rao v. B. Venkata Rao.

AIR 1953 Mys 27 : ILR (1953) Mys 309 : 1953 Cr LJ 644.

——Previous decree relating to property in dispute —Effect.

If there is a decree of a competent Court for possession in respect of the disputed land, the criminal Court must uphold the possession of the party in whose favour the decree stands, but a mere declaratory decree without any determination of the question of possession, which may still continue to be in dispute, cannot always be accepted as a guide in cases under the section where the Magistrate is really concerned with the question of possession. (P. L. Bhargava J.) Pahalwan v. State.

AIR 1951 All 620 : 1951 All WR (HC) 113 : 1951 All Cr R 21 : 1951 ALJ 436 : 52 Cr LJ 890.

——Effect of prior decree or order—Civil Court already deciding question of title—Subsequent proceedings under S. 145—Propriety of.

Section 145 has, avowedly, a very limited scope "being remedial measure" designed to avert immediate breach of the peace over disputes relating to possession of immovable properties. The ambit of the section is edged in by certain conditions, and the final order passed therein is always subordinated and subjected to a decision of a competent Civil Court, if and when pronounced, at the instance of the vanquished party. A Magistrate, in exercise of his jurisdiction under this section, cannot reagitate a dispute that has been settled by a competent Court and give declaration in favour of a party whose claim to title and subsisting possession has already been negatived in a very recent contested litigation. The scope and purview of the section does not allow free and untrammelled interference by Criminal Courts with the final decision of Civil Courts. (Ray, J.) Jang Bahadur v. Nazimul Haque.

AIR 1947 Pat 245 : 12 BR 770 : 226 IC 516 : 47 Cr LJ 976.

——Mere fact that land in dispute is small area, and that the fact that dispute is of civil nature, whether helps party.

In an inquiry under S. 145 the fact that the land is small in area is a neutral consideration and does not help either party and to say that the dispute is one of a civil nature begs the whole question. If either party has a good case, that party will obtain a proper decision from a Civil Court; but till such a decision can be obtained, proceedings under the criminal law are taken to avoid a breach of the peace. (Ram Lall, J.) Gurditta v. Taja.

AIR 1939 Lah 108 : ILR (1938) Lah 611 : 41 PLR 217 : 11 RL 741 : 181 IC 59 : 40 Cr LJ 519.

CRIMINAL P. C. (V of 1898), S. 145—15. "Dispute", meaning of

——There may be a dispute between a trust and a third person. (Varadachariar and Stodart, JJ.) Jagathambal Anni v. Periathambi Nadar.

AIR 1936 Mad 188 : 161 IC 234 : 70 MLJ 441 : 43 Mad LW 496 : 1936 Mad WN 457 : 1936 M Cr C 206.

——The jurisdiction of a Magistrate arises from the fact that he has received certain information and that he is satisfied as to the truth of that information. The jurisdiction of the Magistrate does not depend on how he proceeds. (Mukerji Actg. C. J., Young and King, JJ.) Kapoor Chand v. Suraj Prasad.

AIR 1933 All 264 : (1933) A L J 188 : Ind Rul (1933) All 125 ; 55 All 301 : 142 IC 537 : 34 Cr LJ 414 (FB).

——"Dispute" means actual disagreement at the time though the question is previously decided by Civil Court (Mukherji, J., differing).

Per Full Bench:—The word "dispute" in sub-section (1) means actual disagreement existing between the parties at the time of the proceedings under S. 145 even though the question as to the right to possession has already been decided by a Civil Court. 6 WR Cr 10; 16 WR Cr 24; 23 WR Cr 17; 5 CLR 200; 6 Cal 835; 26 Cal 625; 29 Cal 208; 5 CWN 563; 20 CWN 796 and Graham, J. in AIR 1928 Cal 344, Disappr. Cuming, J., in AIR 1928 Cal 344, Appr.

Per Mukherji, J.—The word "dispute" in sub-S. (1), S. 145, means actual disagreement existing between the parties at the time of the proceedings under S. 145 even though the question as to right to possession has already been decided by a Civil Court, if the decision of the Civil Court amounts only to a determination of the right to possession, except in cases where such right and a consequent claim to possession have been negatived by a decree which is either inter partes or may be treated as such, as also in cases in which khas or actual possession has been delivered by the Civil Court either inter partes or between parties who may, in effect, be regarded as parties to the proceedings. The words "actual possession" in sub-S. (1), S. 145, mean actual physical possession even though wrongful, i.e., that of a recent trespasser in actual physical possession at the time of the proceedings under S. 145, provided the dispute as to possession has not been determined by a Civil Court as explained above. (Rankin, C. J., Suhrawardy, B. B. Ghose, Mukerji and Cammiade, JJ.) Agni Kumar Das v. Mantazuddin.

AIR 1928 Cal 610 : 113 IC 181 : 48 CLJ 193 : 32 CWN 1173 : 56 Cal 290 : 11 AI Cr R 433 : 30 Cr LJ 69 (FB).

——Order without jurisdiction.

Magistrate attaching whole property under S. 145 at the instance of the Collector is without jurisdiction and must be quashed.

The Civil Court decreed joint possession to the petitioners and the opposite party, an appeal

CRIMINAL P. C. (V of 1898), S. 145—15. "Dispute", meaning of

against which decree was pending before the Privy Council. The opposite party applied for partition which was made by a revenue officer and possession of portion of the land was given to the opposite party. The partition proceedings were subsequently quashed by the Financial Commissioner who directed that the status quo ante be restored. The Collector, however, did not wish to do so and at his instance the Magistrate attached the whole of the land and appointed a receiver under S. 145, holding that there was a dispute about the whole area.

Held, that the proceedings taken by the Magistrate were without jurisdiction and must be quashed. (Addison, J.) Wali Muhammad v. Rahmat Ali.

AIR 1928 Lah 818 : 110 IC 807 : 11 AI Cr R 44 : 29 Cr LJ 775.

——Where a person claims to be in possession of land and complains that another person, in collusion with a Magistrate, is disturbing his possession and that there is danger of breach of peace, the proper procedure is to proceed under S. 145 and not to give the applicant a warning not to go to the land on reports by police or other officer. (Jwala Prasad, J.) Ameer Ali v. Dukhan Monir.

AIR 1928 Pat 574 : 109 IC 805 : 10 AI Cr R 320 : 29 Cr LJ 613.

——Admission of a dispute by both the parties concerned is certainly evidence of the existence of that dispute. (Wazir Hasan, A. J. C.) Mt. Maquim-un-nissa v. Mt. Ahmad-un-nissa.

AIR 1925 Oudh 605 : 2 OWN 704 : 90 IC 541 : 26 Cr LJ 1581.

——Bona fide dispute.

Where the Magistrate finds that there is a bona fide dispute between the parties, he ought to initiate proceedings under S. 145. AIR 1922 Pat. 435 (F.B.) and 4 Pat. L.W. 354, Foll.

Where the presumption of the record of rights and of the partition papers was in favour of petitioners, and the Police report was in favour of the opposite party.

Held, that there was clearly a case in which there was a bona fide dispute between the parties as regards possession. (Bucknill and Kulwant Sahay, JJ.) Munni Lal v. Gatti Ahir.

AIR 1925 Pat 514 : 88 IC 845 : 6 PLT 746 : 3 Pat LR Cr 70 : 26 Cr LJ 1229.

——The existence of a decision incidentally arrived at by a Criminal Court, for the matter of that, even by a Civil Court does not per se cause a cessation of the dispute between the parties as to possession. (Jwala Prasad, J.) Abdul Shakur v. Abu Sayeed.

AIR 1925 Pat 593 : 86 IC 806 : 6 PLT 710 : 26 Cr LJ 870.

——S. 145 (4)— Duty of Magistrate— Possession under a decree of Court, shortly prior to a preliminary order—Vacation of the order.

It is the duty of a Magistrate to maintain the possession of the party who has a decree of a

CRIMINAL P. C. (V of 1898), S. 145—15. "Dispute", meaning of

competent Court and who was put in possession in execution. Where such a party is found to be in possession a few days before the preliminary order under S. 145 of the Code and where there is nothing on the record to suggest any change of possession, the High Court will not vacate the order in revision. (Kumaraswami Sastri, J.) Mahomed Hussani v. Pachayappa.

AIR 1922 Mad 356 : 42 MLJ 147 : 1921 MWN 866 : 14 LW 678 : 65 IC 444 : 23 Cr LJ 92.

——Rival lessees from competing claimants.

A Magistrate can take action under S. 145 when rival lessees claiming under separate trustees to be in actual possession are likely to cause a breach of the peace. (Sadasiva Iyer and Burn, JJ.) Gopala Iyer v. Krishnasawmy Iyer.

AIR 1920 Mad 209 : 54 IC 473 : 27 MLT 234 : 11 Mad LW 459 : 21 Cr LJ 73.

——Foundation of jurisdiction— Legal enquiry — Evidence recorded by Sub-Magistrate—Sub-Divisional Magistrate acting on—Order if void.

A Sub-Divisional Magistrate passed a preliminary order under S. 145 (1) and directed a Sub-Magistrate to hold a local enquiry, to take evidence on both sides and make his report. The Sub-Divisional Magistrate then examined some witnesses and passed a final order. Held that the order of the Sub-Divisional Magistrate was not without jurisdiction. The essential requisite to give jurisdiction to a Magistrate under S. 145 (1) of the Cr. P. C. is that he must be satisfied about the existence of a dispute likely to cause a breach of the peace. His subsequent action is a matter of procedure and not of jurisdiction. 36 M 275, Foll; 31 M 82, Dis. (Ayling, J.) Jaganatha Rao v. Gopalakrishna Rao.

AIR 1919 Mad 166 : 37 MLJ 589 : 53 IC 613 : 10 LW 447 : 20 Cr LJ 773.

16. Effect of order under the section.

(a) Disobedience of order.
(b) Effect of order in civil proceedings.
(c) Finality of order.
(d) Previous order under S. 145 inter partes.
(e) Prebious order under S. 145 not inter partes.
(f) Remedy of unsuccessful party.
(g) Review of order.

16. Effect of order under the section.

(a) Disobedience of order.

——Party forbidden to disturb possession of successful party — If can plead that he is still in possession in spite of order under S. 145 or that he has been able to regain possession by force.

The whole object of S. 145, Criminal P. C., is to stop a breach of the peace by deciding which party is to remain on the land and which party is to seek his remedy in the Civil Court. Breaches of the peace will continue, and the object of the Legislature will be frustrated if the party who has on the finding that he is not in possession been

CRIMINAL P. C. (V of 1898), S. 145 — 16. Effect of order under the section—(a) Disobedience of order forbidden to disturb the possession of the successful party until eviction in due course of law, is allowed to interfere with the possession of the successful party and to plead once more that whatever the order might have been, he is still in possession or has been able to regain possession by force, and thus either compel the successful party to go to the Civil Court or to coerce a Magistrate to proceed again under S. 145, Cr. P. C. This will be a definite encouragement to disobedience of orders under the section. (Mohamad Noor and Dhavle, JJ.) Ambika Thakur v. Emperor.

AIR 1939 Pat 611 : 18 Pat 544 : 6 BR 203 : 12 RP 389 : 21 PLT 45 : 185 IC 529 : 41 Cr LJ 191.

——Possession of successful party, whether can be put an end to by unsuccessful party by violence or surreptitious invasion.

Though an order under S. 145, Cr. P. C., confers no title, the fact of possession remains and the person in possession can only be evicted by a person who can prove a better title to possession himself. The possession of the party, which succeeds in proceedings under S. 145, Cr. P. C., cannot be put an end to by the unsuccessful party by mere violence or surreptitious invasion. Therefore, even if the unsuccessful party in proceedings under S. 145, is able on some occasions either surreptitiously or forcibly to cultivate the lands in possession of the successful party, these would be no more than isolated acts of trespass—and offences punishable under S. 188, I. P. C., but not acts amounting to the dispossession of the other side and constituting the juridical possession of the offenders unless the other side refrain from asserting their possession for a sufficiently long period and give up the protection of the order under S. 145 in their favour. (Mohamad Noor and Dhavle, JJ.) Ambika Thakur v. Emperor.

AIR 1939 Pat 611 : 18 Pat 544 : 6 BR 203 : 12 R P 389 : 21 PLT 45 : 185 IC 529 : 41 Cr LJ 191.

——Successful party's possession, if can be guaranteed.

The Magistrate cannot guarantee keeping the successful party in peaceful possession, even as against the other party or parties to the proceeding, nor can he prevent that party from parting with the land and afterwards changing his mind. (Dhavle, J.) Inderdeo Singh v. Kesho Singh.

AIR 1938 Pat 1 (5) : 18 PLT 886 : 4 BR 211 : 16 RP 372 : 173 IC 107 : 39 Cr LJ 268.

——Auction purchaser of judgment-debtor's property put in possession by Civil Court—Judgment-debtor assulting him and claiming right of private defence—Judgment-debtor, if protected.

It is preposterous to claim for a judgment-debtor, whose property has been sold in execution of a decree, a right to assault the auction-purchaser who has been put in possession of the property by the Civil Court and was protected by the Criminal Court in keeping that possession when he

CRIMINAL P. C. (V of 1898), S. 145 — 16. Effect of order under the section—(a) Disobedience of Order goes to the land armed with the delivery of possession and supported by the orders of the Criminal Courts. (Mohamad Noor and Luby JJ.) Mahabir Singh v. Emperor.

AIR 1934 Pat 565 : 7 RP 208 : 15 PLT 819 : 152 IC 591 : 36 Cr LJ 146.

——Order under—Disobedience—Complaint after delay of nine months—Reason for delay given—Action on complaint, if to be taken.

Where an order under S. 145, Cr. P. C., was disobeyed, but a complaint about the disobedience was made only after a lapse of nine months and the Magistrate was satisfied that there was disobedience of the order and the reasons for delay in making the complaint were given:

Held, that action should be taken on the complaint. (Grille, A. J. C.) Emperor v. Zahirus Sayed Alvi.

AIR 1934 Nag 114 : 16 NLJ 178 : 6 RN 214 : 148 IC 1014 : 35 Cr LJ 820.

16. Effect of order under the section.

(b) Effect of order in civil proceedings.

——Effect—Order under, can be made only when a party found actually in possession —Civil Court cannot question finding under S. 145, as to possession—But it can decide that person found in possession had no right or title and can put any person in possession if his title is established.

The foundation of jurisdiction for a Court to pass an order under S. 145 is only laid when a party is actually found to be in actual possession of the property on the date on which his possession was likely to be disturbed and to cause a breach of the peace. Unless these are found, the Court would have no jurisdiction to declare that a party was in possession of the property either on the date on which a breach of peace was likely to occur or within two months of that date and to order that his possession was not to be interfered with unless he was evicted in due course of law. It is not open to a civil Court to go behind or to question that finding, although it is open to a civil Court to decide that a person found or deemed to be in possession of the property had no right or title whatsoever to be or to remain in possession and to put any other person in possession if his right or title to get into possession are found for him. At all events, the legal effect of the order under S. 145 would be to place the party found to be in possession, in possession which will be protected if any attempt is made to contravence the order. (Abdur Rahman, J.) Sewa Das v. Ram Parkash.

AIR 1947 Lah 173 : 226 IC 292.

——Evidentiary value of order.

The order under S. 145 is only a piece of evidence to be taken into consideration in determining who is in possession. It would go no doubt to show that the party in whose favour the order is made was in possession on the date when it

CRIMINAL P. C. (V of 1898), S. 145 — 16. Effect of order under the section —(b) Effect of order in civil proceedings

was made. But it is open to the other party to show in a subsequent proceeding that in spite of the order, they were actually in possession or regained possession after the order. (Cuming and Graham, JJ.) Rakhal Dolin v. Maham Lal.

AIR 1927 Cal 701 : 104 IC 443 : 31 CWN 964 : 28 Cr LJ 827.

——Onus lies on plaintiff to prove nature of defendant's possession.

Where plaintiff failed to prove possession both in proceedings under S. 145 and also in survey proceedings.

Held, the onus thus lay heavily on the plaintiffs to show that the defendant was not in possession of the properties by virtue of the title he alleged in the previous proceedings. (Mr. Ameer Ali.) (Raja) Indrajit Pratab Bahadur Sahi v. Amar Singh.

AIR 1923 PC 128 : 45 MLJ 578 : 74 IC 747 : 21 ALJ 554 : 4 Pat LT 447 : 1 PLR 345 : 2 Pat 676 : 50 IA 183 : 25 Bom LR 1259 : 28 CWN 277 : 33 MLT 233 : 18 MLW 728 : 4 LRPC 123 : 5 LR PC 8 : 39 CLJ 318 : 3 PLR 1924 (PC).

——Effect of order—Suit for possession in Civil Court—Parties.

Where the cause of action alleged in the plaint is the dispossession by the defendant on account of the proceedings under S. 145 of the Code of Criminal Procedure, and in that proceedings the defendant (the manager of a company) was declared to be in possession the plaintiffs have got a cause of action against the person who has actually dispossessed them. Moreover, the suit cannot be defeated on account of non-joinder of the proprietors of the company who could have added them as parties. (Das and Kulwant Sahay, JJ.) Chattrapat Pratap Bahadur Sahi v. C. G. Lees.

AIR 1923 Pat 558 : 4 Pat LT 487 : 1 Pat LR 322 : 72 IC 648.

——Effect of order—No presumption against loser.

A decision in proceedings under section 145, Cr. P. C., does not throw the onus on the loser in those proceedings. The decision in proceedings under section 145, Cr. P. C., is not of such a nature as to give rise a presumption in the Civil Court in favour of the winning party in those proceedings. (Adami, J.) Mt. Gantra Koer v. Aligjan.

AIR 1923 Pat 401 : 71 IC 478.

——Evidentiary value of order.

The order of a Criminal Court in proceedings under S. 145, Cr. P. Code can be used as evidence of possession in a subsequent civil suit but the statements of witnesses must be proved only by citing the witnesses over again. (Sharfuddin and Mullick, JJ.) Barkat Ali v. Basant Numia.

AIR 1917 Cal 79 : 39 IC 356 : 21 CWN 175.

CRIMINAL P. C. (V of 1898), S. 145 — 16. Effect of order under the section—(b) Effect of order in civil proceedings

——Civil and Criminal Courts — Civil Court, if can question order under S. 145, Cr. P. C.

A Civil Court cannot question the order of a Magistrate under S. 145 of the Cr. P. C., made with jurisdiction. (Kensington and Chevis, JJ.) Bhagwan Das v. Bhana Mal.

137 PWR 1912 : 14 IC 566 : 84 PR 1912.

16. Effect of order under the section.

(c) Finality of order.

——The order cannot be regarded as dispossession by a landlord for the purpose of Art. 3 of Sch. III, of Bihar Ten. Act. (Agarwala, J.) Udaibhan Singh v. Paras Pande.

AIR 1942 Pat 287 : 8 BR 413 : 14 RP 453 : 198 IC 347.

——The order either under S. 145 or under S. 146 does not interfere with the subsequent order under S. 40 of the Land Revenue Act, by which possession has been made over to the party in whose favour mutation has been effected. (Dalal, J. C.) Emperor v. Nisar Ali Khan.

AIR 1926 Oudh 179 : 90 IC 399 : 26 Cr LJ 1551.

——The proposition cannot be comprehensively laid down that in every case where an order under S. 145, has been made, the necessary consequence is the actual dispossession of the unsuccessful party. (Wazir Hasan, J. C.) Mahesh Singh v. Emperor.

AIR 1925 Oudh 251 : 84 IC 942 : 11 OLJ 743 : 26 Cr LJ 398.

——Effect of order—Order is final.

Until superseded by an order of a competent Civil Court an order under S. 145 of the Code is final. (Daniels, A. J. C.) Emperor v. Bandi Din.

AIR 1921 Oudh 119 : 24 OC 21 : 61 IC 240 : 22 Cr LJ 384.

——Proceedings instituted subsequent to civil suit.

A Magistrate's order under Chap. XII in proceedings instituted subsequent to a civil suit cannot be treated as conclusive on the question of possession. (Ayling and Napier, JJ.) Ramaswami v. Venkappa.

AIR 1917 Mad 365 : 3 LW 233 : 33 IC 1000 : (1916) 1 MWN 184.

16. Effect of order under the section.

(d) Previous order under S. 145 inter partes.

——Ss. 145 and 144—Effect of prior order in proceedings under S. 144 on subsequent proceedings under S. 145.

See ibid, S. 144.

AIR 1953 Cal 397 : 1953 Cr LJ 908.

——Objection to initiation of proceedings not raised and chance of judgment going in favour taken —Judgment going against party — Whether can subsequently challenge jurisdiction.

Where one of the parties to a proceeding under S. 145, Criminal P. C., waits for a year and allows

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the order initiating the proceeding to go unchallenged so long, it cannot subsequently be heard to complain of excess of jurisdiction, because the final order has gone against it and claim as a matter of right that the proceedings should be quashed. (Manohar Lall and Chatterji, JJ.) Shibnarayan Dass v. Satyadeo Prasad.

AIR 1943 Pat 44 : 9 BR 73 : 15 RP 168 : 203 IC 275 : 44 Cr LJ 25.

——Joint possession given in previous proceeding —Effect—Order to be passed in subsequent proceedings.

Where a Magistrate, in the earlier proceeding under S. 145, Criminal P. C., makes an order putting one of the parties in possession, he is bound to maintain him in possession of it and cannot in a subsequent proceeding under S. 145, on an application by the opposite party, oust him and attach the property under S. 146. In any event, even if the order made in the earlier proceeding could be construed as an order putting both the parties jointly in possession, it is patently wrong of the Court to make another order excluding one of them from one-half of the land in dispute and leave the other in exclusive possession of the other half. Even if the Court thinks that the parties had been put in joint possession of the entire land and a dispute had arisen between them as to how it should be partitioned, it is its duty to bind both of them down until the matter is decided by a Civil Court or settled by arbitration. (Shearer, J.) Ramrachya Singh v. Singeshwar Rai.

AIR 1941 Pat 607 : 7 BR 982 : 22 PLT 731 : 14 RP 176 : 195 IC 854 : 42 Cr LJ 791.

——S. 145 (6)— Order under S. 145 (6)— Subsequent dispute over same land between same parties or those deriving their interest from them—Order, if binding.

There was a dispute over certain land in which an order under S. 145 (6), Criminal P. C., was passed in favour of one party. In a subsequent dispute over the same land between the same parties or between parties deriving their interest from them, the Magistrate reversed the order made in the former dispute:

Held, the proceedings in the former dispute were binding upon the parties concerned in the proceedings in the latter dispute and the order of the Magistrate was wrong. Consequently, as provided by S. 145, Sub-S. (6), the party declared to be entitled to possession in the former case was entitled to be protected against disturbance of such possession until evicted therefrom in due course of law. Otherwise, it would be possible for the opposite party to continue to harass his opponents by instituting successive proceedings under S. 145. The party alleging that they were aggrieved had their remedy in a Civil Court, where the question of title and possession could be settled as between

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the contending parties. (Lort-Williams and Cunliffe, JJ.) Elimuddin Sarkar v. Umed Ali Bepari.

AIR 1936 Cal 659 : 63 CLJ 7 : 9 RC 462 : 165 IC 878 : 38 Cr LJ 79.

——Order in previous proceedings under S. 145— Whether can legally bar initiation of fresh proceeding.

As the question to be taken into consideration by a Criminal Court under S. 145, Criminal P. C., is the question as to the present possession of the parties concerned, an order passed in previous proceedings under S. 145 does not legally bar initiation of fresh proceedings if there be reasonable grounds for such initiation as contemplated by law. (Guha and Bartley, JJ.) Haripado Mazumdar v. Dhani Ahamad Sarkar.

AIR 1935 Cal 494 : 1935 Cr C 886 : 157 IC 674.

——Proceedings stayed when both parties appeared in Court and agreed to compromise — Parties intend upon creating a breach of peace—Proceedings can legally be started afresh. (Lakshmana Rao, J.) Sama Naickan v. P. Narayanswami Naidu.

1934 MWN 733.

——A Magistrate in deciding the question of possession under S. 145, is precluded by a previous order of a criminal Court relating to the subject of the dispute, unless he finds that there has been a change of possession since the previous order of the criminal Court was passed. 33 Cal. 33 and AIR 1922 Cal. 364; 49 Cal. 174, Dist. (Addison, J.) Jagat Singh v. Sunder Singh.

AIR 1926 Lah 479 : 95 IC 479 : 27 PLR 630 : 27 Cr LJ 815.

——Fresh proceedings—Proceedings struck off—Renewal on same facts.

Proceedings under Section 145 cannot be renewed after the dispute has been settled and an order has been made that the case be struck off. Under such circumstances a new proceeding would not be justified only on the materials upon which the proceeding, which was struck off was based. (1893) 20 Cal. 867, Foll. (Shadi Lal, C. J.) Ghulam Mahomad v. Emperor.

AIR 1923 Lah 81 (1) : 3 Lah 401 : 71 IC 512 : 24 Cr LJ 160 (1).

——S. 145 (4)— Fresh proceedings— Proceedings dropped—Subsequent reopening of proceedings — Delivery of possession—Legality.

Certain land was attached under clause (4) of S. 145. After several adjournments, the Magistrate refused to give further time to the first party and recorded the order. 'Proceedings stopped, File'. On the same day, a petition was put in by the second party and the Magistrate wrote on it this order— "Heard the parties, examined the documents. The first party have failed to prove their possession and case, though repeated opportunity was granted. Second party will re-

CRIMINAL P. C. (V of 1898), S. 145 — 16. Effect of order under the section — (d) Previous order under S. 145 inter partes

main in possession". Held in doing so, the Magistrate was clearly wrong. In the first place having dropped proceedings he ought not to have reopened them, and secondly, assuming that he had jurisdiction to go on with the case without a fresh proceeding, he ought to have put the parties on the same footing instead of awarding possession to the second party because the first party had failed to prove its case. (Walmsley, and Suhrawardy, JJ.) Samad Ali v. Abdul Majid.

AIR 1923 Cal 314 : 65 IC 851 : 23 Cr LJ 195.

——Revival of cancelled proceedings.

After cancellation of the proceedings on the ground that no dispute likely to cause breach of peace exists, the magistrate cannot revive the proceedings. He can start fresh proceedings only on fresh material. (Jwala Prasad, J.) Khubi Singh v. Darbari Mahton.

AIR 1921 Pat 176 : 2 Pat LT 267 : 1921 Pat (HCC) 167 : 22 Cr LJ 481.

——S. 145 (1)— Large area—Prior order— Subsequent proceedings—Civil suit—Not filed.

When a party has been declared to be in possession as a result of proceedings under S. 145 fresh proceedings under the same section cannot be started against him unless it can be shown that the order has been duly vacated or possession has been amicably surrendered. But if no order under S. 145, Cr. P. Code, is made in respect of a larger area which includes the smaller area covered under the previous proceedings which were not challenged by civil suit, the order will be set aside regarding the common area but will stand good regarding the lands not covered by the previous adjudication. 1 PLW 642, Foll. (Adami, J.) Bajit Lal Pathak v. Harakh Singh.

AIR 1920 Pat 211 : 1 Pat LT 557 : 58 IC 337 : 2 UPLR (Pat) 232 : 21 Cr LJ 753.

——Fresh proceedings after cancellation—Whether fresh proceedings permissible.

For institution of proceedings, overt acts or preparation by the parties showing an imminent danger of the breach of the peace are necessary; merely an imaginary event that might lead to a breach of the peace is not sufficient. For fresh proceedings after once cancelling a proceeding, similar requirements are necessary. (Jwala Prasad, J.) Deo Nandan Singh v. Ramojodhya Singh.

AIR 1917 Pat 368 : 2 Pat LW 25 : 41 IC 139 : 18 Cr LJ 763.

——S. 145, Cls. (5) and (6)—Fresh proceedings—Consent order—Effect.

In proceedings under S. 145 the Magistrate passed an order by consent of parties that the land should be in the possession of both. Held, such an order fell under Cl. 5 and not Cl. 3 and so barred subsequent proceedings between the same parties under the same section. (Holmwood & Sharfuddin, JJ.) Sadhu Biswas v. Muhammad Ali.

15 CWN 568 : 9 IC 167 : 12 Cr LJ 32.

CRIMINAL P. C. (V of 1898), S. 145 — 16. Effect of order under the section — (d) Previous order under S. 145 inter partes

——Fresh proceedings after cancellation.

Where a Magistrate in a dispute relating to certain lands excluded some specified plots from the scope of the inquiry and cancelled the proceedings in respect of those plots and another Magistrate who succeeded him in office passed orders declaring one of the parties in the possession of such excluded plots, the order of the latter Magistrate is one passed without jurisdiction, as he had no legal authority to go into the question of possession of those plots. (Roe and Jwala Prasad, JJ.) Hardeo Singh v. Ram Charitar Singh.

AIR 1916 Pat 418 : 34 IC 1006 : 17 Cr LJ 286.

——No apprehension of breach of the peace—No jurisdiction—Instituting fresh proceedings in spite of and during pendency of the Rule issued by the High Court to set aside order passed in previous proceedings—Propriety of.

The High Court issued a Rule to show cause why the order under S. 145 passed by the District Magistrate should not be set aside. The said Rule came on for hearing and was made absolute. In the mean time, however, during the pendency of the Rule, a Deputy Magistrate, subordinate to the said District Magistrate, on a petition by the opposite party to the said Rule, and without any enquiry as to whether there was an apprehension of a breach of the peace or not, instituted another proceeding under S. 145 in respect of the same subject matter.

Held, that during the pendency of the rule in the High Court, proceedings in the lower Court must be considered to have been stayed, and it was not only irregular but highly improper to institute fresh proceedings.

Held further, that while the order of the District Magistrate was yet in force, there was no reason to suppose that there was any apprehension of a breach of the peace.

When a Rule is issued by the High Court on the District Magistrate staying further proceedings, all subordinate Magistrates are bound to obey the orders of the High Court. (Mitra and Holmwood, JJ.) Pran Ballav Mitter v. Rash Behari Mitter.

4 CLJ 418 : 4 Cr LJ 397.

16. Effect of order under the section.

(e) Previous order under S. 145 not inter partes.

——Fresh proceeding under S. 145, when can be started.

Obiter.—Where in previous proceedings under S. 145, Criminal P. C., a party is declared to be entitled to possession, the Magistrate has jurisdiction to start fresh proceedings under S. 145 if the party to such proceedings was not a party to the previous one. (Mohammad Noor and Dhavle, JJ.) Ambika Thakur v. Emperor.

AIR 1939 Pat 611 : 18 Pat 544 : 6 BR 203 : 12 RP 389 : 21 PLT 45 : 185 IC 529 : 41 Cr LJ 191.

CRIMINAL P. C. (V of 1898), S. 145 — 16. Effect of order under the section — (e) Previous order under S. 145 not inter partes

——Fresh proceedings in respect of same land, when parties to previous proceedings are not same, if can be started.

There is no such qualification that Sub-S. (1) of S. 145 is to be available to the Magistrate only if there is no previous order under Sub-S. (6) between any parties whatsoever. Therefore, the Magistrate can start fresh proceedings in respect of the same land, when the parties to the proceedings are not the same as in the previous proceedings. (Dhavle, J.) Inderdeo Singh v. Kesho Singh.

AIR 1938 Pat 1 (5) : 18 PLT 886 : 4 BR 211 : 10 RP 372 : 173 IC 107 : 39 Cr LJ 268.

16. Effect of order under the section.

(f) Remedy of unsuccessful party.

——Possession—Foundation of jurisdiction—Question of possession—Suit for declaration by unsuccessful party—Person found in possession, if can be restrained under O. 39, R. 1, Civil Procedure Code.

The foundation of jurisdiction for a Court to pass an order under S. 145 is only laid when a party is actually found to be in actual possession of the property on the date on which his possession was likely to be disturbed and cause a breach of the peace and not on the date on which the order is passed under S. 145. It is not open to a Civil Court to go behind the finding of the Criminal Court although it is open to it to decide that a person found, or deemed to be in possession of the property, had no right or title whatsoever to be or to remain in possession, and to put any other person in possession, if his right or title to get into possession are found for him. The legal effect of the finding would be to place the person found in possession in a position, which will be protected if any attempt is made to contravene the order.

Hence, in suit by a party for declaration that he was the mahant of the property in dispute and was in that capacity, entitled to be in possession thereof, and asking for the recovery of possession of certain land and injunction under O. 39, R. 1, restraining the opposite party from interfering with the property, the Court cannot ignore the previous finding of the Criminal Court in proceedings under S. 145, that the opposite party was in possession of the property, and it cannot grant the injunction asked for, in regard to the property of which the plaintiff is seeking possession through Court or in regard to the property which does not form the subject-matter of the plaint. (Abdur Rahman, J.) Sewa Das v. Ram Prakash.

AIR 1947 Lah 173 : 226 IC 292.

——S. 145 (6)—Attachment of house in possession of P—Possession delivered to opposite party R—Order set aside in revision—Possession should

CRIMINAL P. C. (V of 1898), S. 145 —16. Effect of order under the section—(f) Remedy of unsuccessful party

be given to P and R be directed to take civil proceedings.

The intention of the Legislature in enacting S. 145 (6), Cr. P. C., is that the order made by the Magistrate should have reference rather to the subject-matter of the dispute than to the persons who are engaged therein, that is to say, that once the declaration has been made as regards possession of the land, it is, without using the words in the strict technical sense, binding upon all persons interested therein. Once the order of the Magistrate has been made as regards the land, then it is for the person whether he be a party to the proceedings or not who disputes that possession, to take proceedings in a Civil Court.

In proceedings under S. 145, Cr. P. C., instituted by R, an order was passed by a Magistrate putting R in possession of the house. P was in possession of this house at the date of the preliminary order. While the proceedings were pending, the Magistrate attached the house. As a result of the order passed by the Magistrate in favour of the opposite party, the possession of the house was delivered to R. P's revision against the order was allowed and the order of the Magistrate was set aside. It was further ordered that if P had been dispossessed, he should be put in possession of the house again. R was directed to take such steps in the Civil Court as she thought proper. R in the meantime put in a tenant in the house while the actual possession still remained with her. The applicant, therefore, applied to the Sub-Divisional Magistrate for restoration of possession of the house to him. The Magistrate passed the following order:—"If the tenant is not leaving the house, P will have to take legal action to eject him":

Held, that P was entitled to restoration of possession without any interference or obstruction from R or from her tenant and that it was for R or the tenant to take proceedings in a Civil Court. (Ghulam Hasan, J.) Parag Parshadi v. Mt. Ram Dulari.

AIR 1943 Oudh 229 : 1943 OWN (CC) 76 : 15 RO 482 : 1943 AWR (CC) 14 : 206 IC 92 : 44 Cr LJ 459.

——Order, if amounts to final adjudication of rights of parties.

An order under S. 145 is passed as the result of a summary proceeding about the possession of the parties, and the aggrieved party can always have recourse to the Civil Court to establish his right. (Allsop, J.) Kunj Behari Das v. Emperor.

AIR 1936 All 322 : (1930) ALJ 370 : 8 RA 892 : 1936 AWR (HC) 439 : 58 All 920 : 162 IC 736 : 37 Cr LJ 694.

——S. 145, Cl. 6—Effect of order—Unsuccessful lessee can sue for mesne profits without suing in ejectment.

An order under S. 145 (3) declares the party found to have been in possession of the property

CRIMINAL P. C. (V of 1898), S. 145 — 16. Effect of order under the section—(f) Remedy of unsuccessful party

at the date of the notice to be entitled to possession thereof until evicted therefrom in due course of law. This does not mean that the successful party is thereby entitled as of right, to the property in defeasance of whatever legal title there may be existing in favour of the rightful owner. The party who was unsuccessful can therefore sue for mesne profits without suing in ejectment. (Spencer and Devadas, JJ.) Md. Shamsgoya Rowther v. Omandu Pillai.

AIR 1924 Mad 224 : 18 MLW 649 : 1923 MWN 779 : 76 IC 76.

——S. 145—Effect of order—Possession.

Where a party fails to take the step under Section 37 of the Bihar and Orissa Public Demands Recovery Act or rule 103 of order 21, C. P. C. the next remedy is to file a suit in a civil court. But subject to the result of the suit, the order is final and conclusive and is binding upon the criminal court and in fact any court which has to adjudicate upon the possession of the parties. (Jwala Prasad, J.) Kamla Prasad v. Gobind Sahay.

AIR 1922 Pat 13 (2) : 71 IC 785 : 3 Pat LT 826 : 24 Cr LJ 241.

——Order under—Whether amounts to dispossession.

It is not in every case where an order under S. 145, Cr. P. C. has been made, that the necessary result is the actual dispossession of the unsuccessful party. Unless there is an order followed by delivery of possession, it cannot be treated as causing dispossession of the unsuccessful party, who can sue for a declaration of title and confirmation of possession. 12 CLR 139 and 29 Cal 187, P C Dist. (Mookerjee and Beachcroft, JJ.) Jhuman Karli v. Debu Lal Singh.

16 IC 898 : 22 CLJ 415.

16. Effect of order under the Section.

(g) Review of order.

——Ss. 145, 146, 369—Inherent power of Court to revise orders.

A Magistrate cannot invoke his inherent jurisdiction to revise his orders under S. 145 (6) because sub-s. (6) of S. 145 in express terms confers finality on that order. Where, however, an order under S. 145 (6), Cr. P. C. is itself a nullity due to the failure to serve the required preliminary notices under sub-s. (1) of S. 145 on all the parties the Magistrate may invoke his inherent powers and ignore the same; but he cannot revise it merely because he considers that a party who had due notice of the proceedings and was absent on the date fixed for hearing, satisfied him that there were sufficient reasons for his absence on that date. (Narsimham, J.) Krushna Mohan v. Sudhakar Das.

AIR 1953 Orissa 281 : ILR (1953) Cut 311 : 19 Cut LT 330 : 1953 Cr LJ 1726.

——S. 145 (6)—Criminal Court, whether can review final order passed by it.

CRIMINAL P. C. (V of 1898), S. 145 — 16. Effect of order under the section—(g) Review of order

A Criminal Court has no right or authority to review a final order passed by it under S. 145, Cr. P. C., and the fact that the Magistrate who disposed of the previous proceeding was a different officer from the Magistrate who passed the order in the later case makes not the slightest difference. (Mya Bu, J.) U Thi Ha v. Maung Ngai.

AIR 1935 Rang 447 : 13 Rang 302 : 8 R Rang 266 : 159 IC 308 (1) : 37 Cr LJ 92.

——Power of Magistrate—Functus officio.

The order passed under S. 145 is a final order and it is not open either to the Magistrate who passed it or to his successor to review it, or to set it aside in any way. If a Court does so act, its action is without jurisdiction. (Daniels, J.) Lallan Misir v. Ram Richcha.

AIR 1926 All 242 : 48 All 258 : 7 LRA Cr 29 : 24 ALJ 227 : 93 IC 690 : 27 Cr LJ 466.

——S. 145 (1) and (4)—Defects in procedure—Decision without notice—Ex parte order—Non-service—Duty of Magistrate.

A Magistrate should not without satisfaction of the allegation of non-service, reject an application to re-open proceedings under S. 145 which does not necessarily require an affidavit in every case of the service having been effected or not.

In a proceeding under S. 145, Cr. P. C. the first party was absent though there was a written return of service on him by the peon. The Magistrate passed an order in favour of the second party upon taking evidence of that party and subsequently on the first party having filed an application to the Magistrate for re-hearing of the case on allegation of non-service of the notice of the order under Cl. (1) of S. 145 the Magistrate refused to do so on the ground that the case could not be revived. Held that the Magistrate should not have rejected the application for re-opening of the case without satisfying himself about the truth or otherwise of the allegation of the first party as to the notice not having been served. The High Court directed that the matter be reheard by the Magistrate. (Walmsley and Greaves, JJ.) Kali Ch. Kapali v. Abdul Laskar.

AIR 1920 Cal 541 : 24 CWN 902 : 32 CLJ 14 : 58 IC 928 : 21 Cr LJ 848.

——S. 145 (4) — Defects in procedure — Decision without notice—Supplement of final orders without notice to opposite party.

A Magistrate should not supplement an omission in the final order passed under S. 145 without giving the opposite party notice of it. (Teunon and Shamsul Huda JJ.) Natabar Dutta v. Biseshar Rakhit.

AIR 1918 Cal 238 : 22 CWN 552 : 46 IC 412 : 19 Cr LJ 732.

——S. 145 and S. 339—Review.

There is no authority for holding that a Magistrate can review a final order passed by himself

CRIMINAL P. C. (V of 1898), S. 145 — 16. Effect of order under the section — (g) Review of order under S. 145. (Rampini and Sharfuddin, JJ.) Parbati Charan Roy v. Sajjad Ahmad Chowdhury.
35 C 350 : 12 CWN 605 : 7 Cr LJ 401.

17. Evicted in due course of law.

——Ss. 145, 522—Evicted in due course of law.

Ordinarily, a person against whom an order is passed under S. 145 (6) will go to a civil Court for getting the other party evicted; but if he can get him evicted by a Court of another jurisdiction, such as of a criminal Court in proceedings under S. 447, Penal Code, he can certainly do so. When the criminal Court has under S. 522 ordered the opposite party to be put in possession of the property in dispute, it amounts to eviction of the applicant and as that order has been passed in due course of law, that amounts to the applicant's eviction in due course of law. (Desai, J.) B. Gajadhar Singh v. State.

AIR 1953 All 684 : 1953 All WR (HC) 484 : 1953 ALJ 352 : 1953 Cr LJ 1518.

——"In due course of law"— Expression includes proceedings under S. 9, Specific Relief Act —Proceedings under S. 9 are not excluded by order under S. 145. 30 All. 331, Rel. on. (Seth, J.) Kunwar Singh v. Damodar Singh.

AIR 1949 All 203 : 1948 OWN 366 : 1948 AWR HC 363 : 50 Cr LJ 257.

——An order under S. 145 does not bar a suit for ejectment under the Agra Tenancy Act. The expression "eviction in due course of law" in S. 145 is equally applicable to ejectment proceedings under Chapter V, Agra Tenancy Act, and to ejectment under a Civil Court decree. (Daniels, J.) Iqbal Ahmad v. Suraj Bali.

AIR 1925 All 210 : 82 IC 651.

——Once a decree for possession in respect of a land has been passed in favour of a person, the magistrate cannot again refer him to civil Court to have his title cleared. He is only to give effect to the decree of the civil Court. (Simpson, A. J. C.) Lachmi Kuer v. Partab Narain.

91 IC 75 : 27 Cr LJ 43 (Oudh).

——S. 145 (6)— 'Due course of law'—Meaning.

The phrase 'due course of law' in S. 145 (6). Cr. P. C. means an order of a Civil Court or a Court acting under statutory authority. In the latter case, there must be a clear indication express or implied in the terms of the statute itself to show that the order has the effect of a decree, 12 CWN 696, Foll. Order of a settlement officer does not effect eviction in due course of law. (Mullick, J.) Krishna Deyal Gir v. Nirmall.

AIR 1917 Pat 220 : 1 Pat LW 642 : 40 IC 330 : 18 Cr LJ 682.

18. "Fact of actual possession".

(a) Actual possession.
(b) Continuous possession.
(c) Co-sharers.
(d) Discontinuous possession.

CRIMINAL P. C. (V of 1898), S. 145 — 18. "Fact of actual possession"

(e) Evidence.
(f) Joint family.
(g) Large area.
(h) Mine and minerals.
(i) Notional possession.
(j) Possession of servant, agent or manager.
(k) Possession of tenant.
(l) Possession of trespasser.
(m) Possession under S. 144.
(n) Question of title.
See also Note 47—Question of title.
(o) Stealthy possession.
(p) Symbolical possession.
(q) Usufructuary mortgagee.

18. "Fact of actual possession".

(a) Actual possession.

——Partition between A and B after harvest—A willingly accepting partition and saying that B's share was to be his—Whether amounts to giving over possession to B — B's repairing bunds and cultivating seed-bed, if sufficient to constitute possession.

After the partition between A and B, B immediately obtained possession of his share of land but it was after the harvest was completed. Shortly after, proceedings under S. 145 were instituted in which it was contended that there was no evidence that B was in possession and the acts of enjoyment performed by B were not sufficient to establish possession:

Held, that the fact that A willingly accepted the partition and said that the share of B was to be his, amounted, in fact to effectively giving over possession into the hands of B even though the nature of the season made it impossible for B to perform many acts of enjoyment, as repairing of bunds and cultivation of a seed-bed by B were in the circumstances enough to constitute possession. (Horwill, J.) Suryanarayana Raju v. Viswanadharaju.

AIR 1942 Mad 249 : 14 RM 615 : (1941) 2 MLJ 1047 : 1942 MWN 38 : 199 IC 320 : 43 Cr LJ 487.

——'Possession' contemplated is actual and exclusive possession and not joint or constructive possession.

Possession contemplated under S. 145 is not only actual possession but the exclusive possession of the subject in dispute. There is no room whatever for the application of the doctrine of joint possession under that section. The questions of joint possession or constructive possession are both foreign to the scope of S. 145. Further, a Magistrate acting under S. 145 (4) has to decide the possession of the subject of dispute without reference to the merits of the claims of any party. It is not within the province of the Magistrate to determine the title of the parties or the question whether the possession was founded upon title or not. His only concern is to see who is in de facto possession of the subject of dispute.

CRIMINAL P. C. (V of 1898), S. 145 — 18. "Fact of actual possession"—(a) Actual possession

Parties may be joint owners and yet only one of them may be in actual possession of the property to the exclusion of other co-owners. No doubt, the possession of one co-owner will be considered to be the possession of all, and a co-owner not in actual possession would be deemed to be in constructive possession of the property. This doctrine of constructive possession, however, has no place in criminal law and a Magistrate acting under S. 145 is entitled to take notice only of exclusive actual physical possession and has nothing whatever to do with constructive possession or joint possession. (Ghulam Hasan, J.) Mahmood Beg v. Ehsan Beg.

AIR 1941 Oudh 515 : 1941 OWN (CC) 848 (2) : 14 RO 69 : 1941 AWR (CC) 247 : 195 IC 236 : 42 Cr LJ 710.

——Possession defined.

Cuming and Cammiade, JJ.— In a case under S. 145, what the Magistrate has to determine is who is in actual possession at the time or within two months of the proceeding and to declare him to be entitled to possession.

Actual possession means actual physical possession. Actual possession is not necessarily lawful possession. It may be the possession of a trespasser without any title whatever. The person who has obtained what is known as symbolical possession though a Civil Court is not necessarily in actual possession.

Graham, J.—Possession means lawful possession and not possession taken by force in defiance of law. No Court ought to recognize such possession. (Graham and Cammiade, JJ. on difference Cuming, J.) Ambar Ali v. Piran Ali.

AIR 1928 Cal 344 : 109 IC 231 : 55 Cal 826 : 47 CLJ 233 : 32 CWN 275 : 10 AI Cr R 160 : 29 Cr LJ 503.

——The word "actual" in S. 145 used in relation to possession, must be interpreted in the sense of only such actual possession as the nature of the property is susceptible of. (Wazir Hasan, J. C.) Mahesh Singh v. Emperor.

AIR 1925 Oudh 251 : 84 IC 942 : 11 OLJ 743 : 26 Cr LJ 398.

——Scope—Jurisdiction—Nature of possession.

The possession contemplated by S. 145 is actual possession of the subject of dispute. The competency of the Magistrate to interfere depends on the very fact that the possession of the land is in dispute. (Henderson and Geidt, JJ.) Rajendra Narain Roy v. Mahomed Arzumand Khan.

9 CWN 887 : 1 CLJ 331 : 2 Cr LJ 408.

18. "Fact of actual possession".

(b) Continuous possession.

——Continuous possession, meaning explained.

Continuity of possession should be understood with reference to the object over which it is exercised. By continuous possession is meant such possession which a party in possession may have occasion to exercise and has exercised and exercises whenever and wherever he or she likes. (Ray, C. J.) Indramoni Devi v. Raghunath.

AIR 1950 Orissa 59 : ILR (1949) 1 Cut 635 : 51 Cr LJ 674.

——No overt act beyond taking possession under orders of Court —Continued possession of another party, if broken.

Possession given by the Court, even though there be no overt act beyond the actual taking of possession under the orders of the Court, breaks a previous continued possession of another party. (Grille, J. C.) Emperor v. Hakimkhan.

AIR 1934 Nag 217 : 7 RN 84 : 17 NLJ 261 : 31 NLR 97 : 152 IC 28 : 36 Cr LJ 52.

——Continuous possession does not mean possession exercised every day of the year.

The possession claimed by persons other than the landlords having been disbelieved, possession is presumed to be with parties who have title to the land. This possession may not be actual possession. Possession under S. 145 must be absolute and continuous and not occasional. But it is not intended that possession must be such as should be exercised continuously or every day of the year. "By continuous possession" is meant such possession which a party in possession may have occasion to exercise and has exercised and exercises whenever he likes. Continuity of possession should be understood with reference to the object over which it is exercised.

Where the land not capable of yielding much profit on the bank of a river and used to get covered with water at certain seasons of the year and it was found that sometimes bricks were stacked on it, sometimes people were allowed to dry jute on the land, and bastu puja was held on it.

Held, it cannot be said that the landlords were not in actual possession. (Suhrawardy and Cammiade, JJ.) Loke Nath Roy v. Boylalgani.

AIR 1927 Cal 313 : 100 IC 823 : 31 CWN 334 : 7 AI Cr R 556 : 28 Cr LJ 343.

18. "Fact of actual possession".

(c) Co-sharers.

——Possession—Person collecting rent.

Where there is a dispute between members of a Muhammadan family owning fractional shares in the properties of the family, the person in receipt of rents and to whom tenants pay rent is the person in actual possession. (Spencer, J.) Bulkis Bivi v. Nagoor Kanni Rowther.

AIR 1915 Mad 1105 : 17 MLT 225 : (1915) MWN 267 : 28 IC 332 : 16 Cr LJ 284.

——Exclusive possession claimed by each set of landlords through respective tenants— One tenant setting up tenancy against another — Order in favour of one.

When the case is one of exclusive possession claimed by each set of landlords, through their respective tenants an order passed under S. 145,

CRIMINAL P. C. (V of 1898), S. 145 — 18. "Fact of actual possession"—(c) Co-sharers

in favour of one tenant as against other persons setting up their tenancy, is a good and valid order which does not transgress the principle applied in 5 Cr. L. J. 295 (Cal.) (Caspersz and Sharf-ud-Din, JJ.) Gurudas Kundu Chowdhury v. Rai Kedar Nath Kundu Chowdhury.

11 Ind Cas 592 : 38 C 889 : 15 CLJ 184 : 12 Cr LJ 408.

18. "Fact of actual possession."

(d) Discontinuous possession.

——Possession contemplated by section.

Isolated acts of criminal trespass and rioting to secure forcible possession do not amount in law to possession contemplated by S. 145 and do not constitute continuous possession required by the section. (V. Suryanarayana Rao, J.) Prankishen Rao v. Banda Bhima.

ILR (1952) Hyd 556.

——S. 145 (4)—Neither side having effective possession but having only fugitive, scrappy and recent possession —Order should not be under S. 145 (4) but under S. 143. (Chandrasekhara Aiyar, J.) V. Suryanarayanaraju v. S. Ramachandraraju.

AIR 1948 Mad 118 (1) : 60 MLW 576 : 1947 MWN 522 : 1947 AWR Sup 127 : 1947 OA Sup 127 : 1947-2 MLJ 276 : 49 Cr LJ 65 (1).

——Isolated act of trespass, if amounts to possession.

An isolated act of trespass does not constitute possession of the wrong-doer as against the rightful owner in possession. (Mohammad Noor and Luby, JJ.) Mahabir Singh v. Emperor.

AIR 1934 Pat 565 : 7 RP 208 : 1 BR 65 : 15 PLT 819 : 152 IC 591 : 36 Cr LJ 146.

——Applicability of — Discontinuous possession — Market stalls— Possession once a week— Proceedings under S. 145 Cr. P. Code.

The element of continuity of possession is an ingredient which is necessary at any rate in cases where interruption is not due to seasonal variations, in proceedings under S. 145, Cr. P. Code. S. 145 does not apply to a case where the petitioners claim possession of a market stall only one day in the week and the respondents are alleged to be in possession throughout the week. (Walmsley and Suhrawardy, JJ.) Nayan Manjuri Dasi v. Fazley Huq Sardar.

AIR 1922 Cal 502 : 49 Cal 871 : 71 IC 527 : 24 Cr LJ 175.

——Possession of parties.

Where a party claims no easement or customary right over the property, any intermittent encroachment on his part would not affect the title or possession of the superior landlord. The possession of the intruder, ineffectual for the purpose of transferring title, ceases upon its abandonment to be effectual for any purpose. It does not leave behind it any cloud on the title of the rightful

CRIMINAL P. C. (V of 1898), S. 145 — 18. "Fact of actual possession"—(d) Discontinuous possession

owner. (Pratt and Handley, JJ.) Bholanath Singh v. Wood.

32 Cal 287 : 2 Cr LJ 202.

18. "Fact of actual possession."

(e) Evidence.

——Magistrate is the sole judge of the sufficiency of materials upon which the finding as to possession is to be based. (Jwala Prasad, J.) Bansi Singh v. Emperor.

AIR 1918 Pat 228 : 3 PLW 356 : 19 Cr LJ 113.

18. "Fact of actual possession."

(f) Joint family.

——Dispute between coparceners—Applicability.

In law, a coparcener's possession is possession for himself as well as for the other coparceners, but in a proceeding under S. 145, Criminal P. C., he is entitled to sustain a plea that he alone is in exclusive possession for the time being. This does not and cannot amount to legal ouster of the other coparceners. As coparceners, the other contesting coparceners are in constructive possession of the lands in dispute. But that is quite different from being in actual possession. (Banerji, J.) Kapildeo Narain Singh v. Ramdahin Singh.

AIR 1953 Pat 363 : 1953 BLJR 382 : 1953 Cr LJ 1747.

——Dispute between manager of joint Hindu family and other members.

A Manager of a joint Hindu family should be protected in his possession by proceedings under S. 145, as against other member of the family. (Benson and Boddam, JJ.) Bhaskaruni Kesavrayudu v. Bhaskaruni Chalapati Rayadu.

18 MLJ 343 : 31 M 318 : 4 MLT 301 : 8 Cr LJ 205.

18. "Fact of actual possession".

(g) Large area.

——Fishery— Local investigation— Possession — Attachment.

Where there is a dispute as regards the possession of a fishery extending over several miles in length and the Magistrate is unable to satisfy himself as to the possession of the whole length in question, he should ascertain so far as he can the possession of some portion or portions thereof. As to the portion of which he is able to find a party in possession, he should proceed under S. 145 and only as to the remainder he should proceed under S. 146. (Teunon and Cuming, JJ.) Upendra Nath v. Prasanna Kumar.

AIR 1919 Cal 884 : 48 IC 497 : 20 Cr LJ 17.

18. "Fact of actual possession".

(h) Mines and minerals.

——Held on facts that person was in possession of minerals at places being worked by him—Operation carried on by person, held did not constitute

CRIMINAL P. C. (V of 1898), S. 145 — 18. "Fact of actual possession"—(h) Mines and minerals

ouster of proprietor's possession over unworked minerals.

The Court, in proceedings under S. 145, Criminal P. C., can properly consider questions relating to title where such is necessary in order to ascertain who is in possession.

Unworked minerals are not capable of such possession as is the surface of land or a house. Land can be cultivated; a house can be occupied; but unworked minerals cannot even be occupied. Minerals can be possessed by actual working; but where a large portion of the mineral area has not been worked, it is necessary that the Magistrate should consider who is the owner of the minerals in order to assist him in coming to the conclusion as to who was in possession of the same.

Where a proprietor holding a permanently settled estate grants a permanent, heritable and transferable interest in certain lands, by a patta, but the patta does not grant in express terms the right in the minerals, the person holding the land under the patta cannot found a title to the sub-soil rights. In such a case, the proprietor shall be deemed to be the owner of the minerals underlying the land.

In proceedings under S. 145, Criminal P. C., it is possession that matters and not ownership. The nature of actual physical possession varies with the subject-matter. In the case of unworked minerals, possession follows title and the owner of unworked minerals is in possession of them though he is not actually engaged in working them. He is in a position to work them when he so desires, and he can lease them to others who may work them. If the owner of unworked minerals under a defined area sinks a shaft and begins to work the minerals in that area, he can properly be said to be in actual physical possession of the whole of the minerals in that area. In the same way, if the owner of minerals under a defined area grants to third parties mining leases of the minerals under portions of such area, he exercises acts of ownership over those minerals and he can truly be said to be in possession of the whole of the minerals under that defined area.

A person was in possession of certain land under a patta which did not expressly grant right to the minerals therein. He caused to be made a geological survey of some portion of the land. He had been mining bauxite and had stacked quantities of ore obtained near these sites He had also built a road up to the nearest railway station for carting the bauxite for transit by rail and built a bhandar for the use of the coolies working on the site. He had, however, not worked over the whole area. The evidence showed that intensive working had only taken place for a very short period of time before proceedings under S. 145. Criminal P. C., were started and up to

CRIMINAL P. C. (V of 1898), S. 145 — 18. "Fact of actual possession"—(h) Mines and minerals

the time of these proceedings, work had only taken place on the extreme western edge of the hill situated in those lands:

Held, that the person was in possession of the minerals at the places which were actually being worked by him:

Held, also that the operations carried on by the person did not, however, constitute an ouster of the possession of the proprietor of the land over the unworked minerals in that area. (Harries, C. J. and Rowland, J.) Ranchi Zamindari Co., Ltd. v. Pratap Udainath Sahi Deo.

AIR 1939 Pat 209 : 20 PLT 105 : 5 BR 711 : 11 RP 657 : 18 Pat 215 : 182 IC 89 : 40 Cr LJ 631.

18. "Fact of actual possession."

(i) Notional possession.

——Possession means actual possession — Mere attornment does not give possession.

Possession within the meaning of S. 145, is actual physical possession and not notional possession. Mere attorment to person by tenant does not give the former possession, and does not dispossess another party, unless there has been delivery of crops by the tenant as a result of the attornment. (Ray C. J.) Indramoni Devi v. Raghunath.

AIR 1950 Orissa 59 : ILR (1949) 1 Cut 635 : 51 Cr LJ 674.

——Possession of document is not enough. Actual possession is the only deciding factor. (Burn, J.) Nakkolakkal Bappu v. Marakkarakoyil.

1935 MWN 1064.

——Sale certificate issued—Rights of auction purchaser.

Where a party purchased the land in execution-sale, and the sale was duly confirmed and the sale certificate was issued in his favour held, that there being no delivery of possession, actual or symbolical, his rights could not be protected by proceedings under S. 145. (Munro and Sankaran Nair, JJ.) Ragava Aiyangar v. Krishnaswamy Aiyar.

4 MLT 189 : 31 M 416 : 8 Cr LJ 392.

18. "Fact of actual possession."

(j) Possession of Servant, agent or manager.

——Servant, whether can set up possession against master.

In a proceeding under S. 145, Cr. P. C., the servant cannot set up the possession by him for his master or superior as his own possession. (Bardwell, J.) Perumal Konan v. Tirumalai Machi.

AIR 1933 Mad 245 : (1932) MWN 1079 : Ind Rul (1933) Mad 63 : 37 MLW 143 : 140 IC 900 : 34 Cr LJ 88.

——Dismissed agent's possession is not permissive.

Where a dismissed agent continues to be in possession of his principal's house, his possession cannot be said to be that of an agent and consequently is not of a permissive character. AIR

CRIMINAL P. C. (V of 1898), S. 145 — 18. "Fact of actual possession"—(j) Possession of servant, agent or manager

1926 Nag 286, Dist. (Kolhatkar, A. J. C.) Shriram v. Samirmal.

AIR 1928 Nag 284 : 24 NLR 148 : 11 AICr R 166 : 111 IC 662 : 29 Cr LJ 902.

——The possession of an agent or a servant which is permissive cannot give him a locus standi as against his principal or master. The possession that can be pleaded in a proceeding under S. 145 must be possession based on a claim of right to possession. 10 CWN 1088, Foll. (Findlay, Offg. J. C.) Bajirao v. Dadibai.

AIR 1926 Nag 286 : 92 IC 164 : 27 Cr LJ 212.

——S. 145 is not meant to be used to protect the possession of a servant against the master. (Ramesam, J.) Thyalyee v. Srirangaraju.

AIR 1923 Mad 60 : 43 MLJ 624 : 71 IC 228 : 16 MLW 497 : 1922 MWN 629 : 31 MLT 202 : 24 Cr LJ 100.

——Possession of manager.

Possession includes possession of proprietor through his agent or manager. The mere fact that the word 'management' is used to describe acts of possession would not exclude the jurisdiction of the magistrate. (Chapman, J.) Ghasi Ram v. Amrita Mal.

AIR 1917 Pat 606 : 2 Pat LW 94 : 41 IC 826 : 1917 Pat HCC 350 : 18 Cr LJ 858.

K's predecessor gave M the right to collect the whole of the tolls from a market. M was under an obligation to give K's share at the end of the year to K.

Held that M's collection as agent of K constituted K's possession. (Coxe and Ryves, JJ.) Akaloo Chandra Das v. Mohesh Lall.

4 Ind Cas 696 : 36 Cal 986 : 11 Cr LJ 28.

——Nature of possession contemplated—Debutter property — Dispute between Shebaits regarding management.

Possession, that can be pleaded in a proceeding under S. 145 of the Code, must be possession based on a claim of right to possession. The possession of an agent or a servant, which is permissive, cannot give a party to a proceeding a locus standi as against his principal or master. The possession of one co-shebait, who is entrusted with the sole management of the debutter property is, that of an agent as regards the shebaiti rights of other shebaits. Proceedings under S. 145 cannot be instituted in respect of a dispute between a shebait claiming sole management and his co-shebaits, who claim to have joint management with him. Debutter property is impartible and inalienable. The possession of shebaits must always be necessarily joint and cannot be a subject of proceeding under S. 145. (Mitra and Holmwood JJ.) Nritta Gopal Singh v. Chandi Charan Singh.

10 CWN 1088 : 4 Cr LJ 215.

18. "Fact of actual possession."

(k) Possession of tenant.

——S. 145 (2)—Possession of tenant, if amounts to

CRIMINAL P. C. (V of 1898), S. 145 — 18. "Fact of actual possession"—(k) Possession of tenant

possession by landlord.

In case of a dispute regarding possession of land, between rival landlords, claiming possession through different groups of tenants, the possession of a group of tenants may amount to possession by the landlords of that particular group. Where, however, a tenant denies that he is the tenant of the party in respect of the land which he actually possesses, his possession cannot be regarded as possession of that party though the tenant may have obtained possession originally by virtue of a settlement from that party; and consequently the tenant and not that party, should be declared to be in possession of the land of which the tenant is in actual possession. (Lodge, J.) Karnadhar Ray v. Sailendra Nath Ghosh.

ILR (1948) 1 Cal 150.

——Rule, 'possession of tenant is possession of landlord'—Applicability.

The rule that the possession of the tenant is the possession of the landlord does not apply as between landlord and tenant. But as between rival landlords or between a landlord and the tenant of another landlord, the rule will apply.

(Whether tenants can be made parties discussed.) (Happell, J.) P. Venugopal Mudliar v. P. V. Neelakanta Mudliar.

AIR 1945 Mad 255 : 1945 MWN 104 : 58 MLW 272: (1945) 1 MLJ 303 : 18 RM 142 : 220 IC 309 : 46 Cr LJ 730.

——Possession through tenant, whether such possession.

The words "actual possession" found in S. 145, Cr. P. C., mean actual physical possession, even though wrongful. The words are sufficiently clear and they can only mean possession in fact as distinguished from possession implied by law, or constructive possession. A party cannot be said to be in possession of land within the meaning of S. 145 when it is the possession claimed through the tenant i.e., constructive possession. (Pandrang Row, J.) Ranga Razu v. Srinivasa Jagannatha Rao.

AIR 1938 Mad 654 : 1938 MWN 252 : 47 MLW 340 : (1938) 1 MLJ 453 : 11 RM 346 : 177 IC 584 : 39 Cr LJ 922.

18. "Fact of actual possession."

(l) Possession of trespasser.

——"Fact of actual possession."

Section 145 deals with actual possession and even if a party remains in possession of the property illegally his possession would have to be maintained for the purposes of that section. (Hemeon Ag. C. J.) Bishan Pusha Gond v. Mayaram.

AIR 1953 Nag 356 : 1953 NLJ 423 : 1953 Cr LJ 1795.

——Actual possession — Even a rank trespasser is entitled to be maintained in possession.

CRIMINAL P. C. (V of 1898), S. 145 — 18. "Fact of actual possession"—(l) Possession of trespasser

Under S. 145 a Court is bound to maintain the possession of a person who is found to be in actual possession of the house more than two months before the order under S. 145 (1) even if he be a rank-trespasser, as against any interference by the rightful owner: AIR 1928 Cal 610 (FB) and AIR 1941 Oudh 155, Foll. (Agarwala J.) Gyan Devi v. Rex.

AIR 1949 All 144 : 1948 AWRHC 180 : 50 Cr LJ 209.

——Squatter, rights of.

Even a squatter is entitled to the benefit of S. 145 unless his possession began within two months of the filing of the petition. (Horwill, J.) Manickam Pillai v. Meenammal.

1937 MWN 732 (733).

——Trespasser obtaining possession and sowing crops—Title, if established.

Possession is not lost because trespassers go without license and plough the land.

If trespassers obtain possession for a sufficient length of time to sow crops themselves, they cannot be said to have established a title to remain in possession and are not amenable to the sanctions of the criminal law. (Grille, J.) Thakurdas v. Narayan.

AIR 1936 Nag 192 : 9 RN 144 : ILR (1936) Nag 205 : 166 IC 709 : 38 Cr LJ 307.

——Decree-holder's possession lawful against one but unlawful against another—Possession, whether can be maintained under S. 145.

For the purposes of S. 145, Cr. P. C., a decree-holder has no advantage over anyone else except that he can date his possession from the date when the Court delivered possession to him, but he must maintain that possession as any other person would have to maintain it. His possession might be lawful as against one person and unlawful as against another but the possession is his. Such possession can be maintained under S. 145. (Grille, J. C.) Emperor v. Hakimkhan.

AIR 1934 Nag 217 : 7 RN 84 : 17 NLJ 261 : 31 NLR 97 : 152 IC 28 : 36 Cr LJ 52.

Per Full Bench.—The words "actual possession" in sub-S. (1), S. 145, mean actual physical possession even though wrongful, e.g., that of a recent trespasser in actual physical possession at the time of the proceedings under S. 145. (Rankin C. J. Suhrawardy, B. B. Ghose, Mukerji and Cammiade JJ.)

AIR 1928 Cal 610 : 113 IC 181 : 48 CLJ 193 : 32 CWN 1173 : 56 Cal 290 : 11 AI Cr R 433 : 30 Cr LJ 69 (FB).

——Even a trespasser is entitled to have his actual possession maintained if it is peaceful. (Kolhatkar, A. J. C.) Sriram v. Samirmal.

AIR 1928 Nag 284 : 24 NLR 148 : 111 IC 682 : 11 AI Cr R 166 : 29 Cr LJ 902.

18. "Fact of actual possession."

(m) Possession under S. 144.

In a proceeding under S. 145, a party who entered into possession and retained possession under S. 144 should be declared to be entitled to possession until evicted in due course of law. (Teunon and Beachcroft, JJ.) Srinath Roy v. Probhat Chandra.

CRIMINAL P. C. (V of 1898), S. 145 — 18. "Fact of actual possession"—(m) Possessio i under S. 144

AIR 1917 Cal 100 : 38 IC 333 : 18 Cr LJ 301.

18. "Fact of actual possession."

(n) Question of title.

See also Note 47.—Question of title.

——"Parties concerned".

Where a son is in actual possession of the property, it is not necessary to issue notice to the father because his name happens to be mentioned as owner and proprietor of the land. The Court is concerned with the person in actual possession who is likely to create a breach of the peace. It is not concerned with the question as to where the title of the land lies. (Srinivasachari, J.) Abdullah v. Hanmanthappa.

AIR 1953 Hyd 286 : ILR (1953) Hyd 173 : 1953 Cr LJ 1862.

——Ss. 145, 146—Fact of actual possession must be decided — Magistrate unable to come to any finding—Procedure.

In a proceeding under S. 145, the Magistrate is concerned only with the question of actual physical possession and he must determine that question irrespective of the right to possession. He cannot give possession to a party on a finding that he has "a better right of possession."

If the learned Magistrate is unable to satisfy himself as to which of the parties was in actual physical possession, or if he decides that none of the parties was in such possession, it is open to him to attach the subject of dispute; but the power to attach given under S. 146 must not be exercised light-heartedly. (Das, J.) Suratia v. Jailal Thakur.

AIR 1952 Pat 233 : 1952 AWR (Sup) 55 : 1952 Cr LJ 703.

——Fact of possession and not right to property has to be decided.

It is the duty of the Magistrate to decide the fact of possession on the date of the preliminary order or within two months prior to that date. Magistrate cannot adjudicate the rights of the parties entitling them to possession. Where the Magistrate goes beyond the scope of his jurisdiction, by deciding rights of the parties his order is bad in law. (Ranawat, J.) Udami v. The State.

ILR (1952) Raj 170.

——Scope — 'Fact of actual possession'.

Under S. 145, the Magistrate is only empowered to decide the fact of actual possession of the subject of the dispute without reference to the merits or the claim of any of the parties to a right to possess the subject of dispute. (Ghose C. J. and Bapna, J.) Pema v. Sujia.

1949 JLR 56.

CRIMINAL P. C. (V of 1898), S. 145 — 18. "Fact of actual possession"—(n) Question of title

——"Actual possession" has no reference to any right to possess.

What the Magistrate is concerned with in proceedings relating to disputes as to immovable property under Chap. XII, Criminal P. C., is not the right to possess the subject-matter of dispute but the actual possession thereof at the date of the order under Cl. (1), S. 145. The expression 'actual possession' is plain and unambiguous and has no reference to any right to possess. (Davis, J. C. and Lobo, J.) Rahimalishah Alishah v. Emperor.

AIR 1940 Sind 61 : ILR (1940) Kar 421 : 12 RS 253 : 187 IC 627 : 41 Cr LJ 493.

——Magistrate is incompetent to base final order on the merits of the claims of parties to a right to possess but should confine himself to the question of actual possession even if the possession is that of a trespasser, provided it is peaceable. (Kolhatkar, A. J. C.) Shriram v. Samirmal.

AIR 1928 Nag 284 : 111 IC 662 : 24 NLR 148 : 11 AI Cr R 166 : 29 Cr LJ 902.

——Relevancy of title.

Neither proof of title nor an adjudication on the question of title constitutes proof of actual possession. (Kolhatkar, A. J. C.) Shriram v. Samirmal.

AIR 1928 Nag 284 : 111 IC 662 : 24 NLR 148 : 11 AI Cr R 166 : 29 Cr LJ 902.

——Enquiry must be limited to actual possession—Rights of parties to possession are immaterial.

In a proceeding under S. 145 the enquiry is limited to the fact of actual possession of the subject of dispute by the parties, and this enquiry is to be without reference to the merits of the claims of any such parties to a right to possess the subject of dispute. The question as to which of the parties has a right to possess the subject of dispute is irrelevant. Where the tenants instead of paying rent to the rightful person having right to collect, pay it willingly to another, the former cannot be said to be "forcibly" dispossessed by the latter. AIR 1925 Pat 33, Rel. on; 1890 AWN 178, Diss. from. (Iqbal Ahmad, J.) Ata Husain v. Latif Husain.

AIR 1927 All 476 : 101 IC 469 : 8 LRA Cr 64 : 7 AI Cr R 433 : 28 Cr LJ 437.

——In a proceeding under S. 145, the main point to be considered is the fact of actual possession and not the right of a party to possess the subject-matter of dispute. (Wazir Hasan, J. C.) Abdul Wahab v. Emperor.

91 IC 76 : 27 Cr LJ 44 (Oudh).

——A right to possess is quite different from actual physical possession, and questions as to rights of parties cannot legitimately be the subject of inquiry in proceedings under S. 145, which is concerned solely with the fact of actual physical possession, whether lawful or unlawful. (Moti Sagar, J.) Bhagwan Das v. Maula Dad Khan.

AIR 1924 Lah 678 : 75 IC 990 : 25 Cr LJ 78.

CRIMINAL P. C. (V of 1898), S. 145 — 18. "Fact of actual possession"—(n) Question of title

——Dispute between owner and occupant.

Where the magistrate finds that the dispute is between persons in actual possession and those in constructive possession, that between the owner and the occupant, the magistrate should maintain the possession of the person in actual possession. (A. Lucas and H. N. Crouch.) Crown v. Jamal wd. Pirmohomad.

1 SLR 25 : 9 Cr LJ 265.

——Enquiry into right of parties.

Under S. 145 the duty of the Magistrate is not to enquire into the rights of the parties, but into the fact of actual possession. (Rampini and Sharfuddin, JJ.) Arju Mea v. Arman Mea.

7 CLJ 369 : 7 Cr LJ 336.

——Question of title.

In proceedings under S. 145, magistrate should decide question of actual and not rightful possession. (Batty and Aston, JJ.) In re Sanganbasawa Kom Basappa.

7 Bom LR 18 : 2 Cr LJ 28.

18. "Fact of actual possession."

(o) Stealthly possession.

——Ss. 145 and 360—Possession, proceedings under Ch. 12— Depositions as basis for valid order — Evidence Act, S. 80.

During the absence of the opposite party, a stealthy act of possession in the most haphazard manner more than two months before the date of the order under S. 145 (1) cannot be regarded to be an act of possession. De facto possession means effective occupation or control. (Ross, J.) Ramnarain Singh v. Dhonrai Gope.

AIR 1922 Pat 371 : 3 Pat LT 291 : 65 IC 557 : 23 Cr LJ 125.

18. "Fact of actual possession."

(p) Symbolical possession.

——(Civil P. C. (1908), O. 21, R. 35.)

The rule for delivery of possession in the case of eviction under the Land Revenue Code is the same as that under Civil P. C., in execution of a decree or order.

Where, therefore, the land was in actual possession of A who was not a party to the proceeding delivery could be only of symbolical possession. Consequently, in the subsequent proceedings under S. 145, Cr. P. C., the actual possession of A must be held to have been continued undisturbed on the date of the Magistrate's preliminary order. (Shah C. J. and Baxi J.) Vipra Manishanker Vaghji v. Shavji Govind.

AIR 1953 Sau 135 : 1953 Cr LJ 1253.

——A person in formal possession of a property in execution of a decree shall be deemed to be in possession of the property. (Neave, A. J. C.) Balku v. King-Emperor.

AIR 1925 Oudh 183 : 81 IC 533 : 25 Cr LJ 917.

——Relevancy of—Symbolical possession of decree-holder— Actual possession with judgment-debtor's representatives.

CRIMINAL P. C. (V of 1898), S. 145 — 18. "Fact of actual possession"—(p) Symbolical possession

Where the heirs and representatives of the original judgment-debtor were in possession of a property symbolical possession of which was given to the decree-holder auction purchaser on 17th November 1918 few days before the death of the judgment-debtor, held, that the Magistrate could not validly put the auction purchaser in possession, in S. 145 proceedings instituted on 22nd January 1921. Since it was found that in spite of the symbolical delivery, the heirs of the judgment-debtor were all along in actual possession, and that the auction purchaser was sleeping over his rights. (Teunon and Suhrawardy, JJ.) Shahabaj Mandal v. Bhajahari Nath.

AIR 1922 Cal 364 : 49 Cal 177 : 75 IC 75 : 25 CWN 743 : 24 Cr LJ 875.

——Symbolical possession.

Where symbolical possession of the holding was given to a party some 15 months before the date of proceedings under S. 145, held it was incumbent on the Magistrate to go into the question of actual possession between the two dates and he should not discard evidence of actual possession on the date on which the proceedings were instituted. (Teunon and Shamsul Huda. JJ.) Hazari Khan v. Nafer Chandra Pal.

AIR 1918 Cal 662 : 40 IC 718 : 22 CWN 479 : 18 Cr LJ 718.

——Relevancy of symbolical possession — How determined.

It is the actual possession of the subject of dispute that must be enquired into in proceedings under S. 145, regardless of the delivery of symbolical possession under O. 21, R. 96, C. P. C. (Ayling, J.) Ramalingam v. Raja of Ramnad.

AIR 1916 Mad 640 (2) : 31 IC 176 : 16 Cr LJ 736.

18. "Fact of actual possession."

(q) Usufructuary mortgagee.

——T. P. Act, S. 83.

In a proceeding under S. 145, the Magistrate has no power to disturb the possession of a usufructuary mortgagee at the instance of a depositor of money under S. 83 of the T. P. Act, as a mere deposit does not transfer possession nor puts an end to that possession which can only be disturbed by a Civil Court. (Jwala Prasad, J.) Shahid v. Mohammad.

62 IC 577 : 22 Cr LJ 561 (Pat).

19. Finality of preliminary order.

——Further finding as to breach of peace not necessary.

Where the Magistrate had come to a conclusion that there was apprehension of breach of peace and thereafter called upon the parties to file their respective claims, the law does not contemplate a further finding unless the Magistrate is satisfied that the conclusion arrived at by him in the first instance was not correct, in which case he may vary his order and say that there is no apprehension of breach of peace and drop the proceedings.

CRIMINAL P. C. (V of 1898), S. 145 — 19. Finality of preliminary order

Therefore, the fact that there was no subsequent finding that there was apprehension of breach of peace would not make the order illegal. (A. Srinivasachari, J.) Abdullah v. Hanmanthappa.

AIR 1953 Hyd 286 : ILR (1953) Hyd 173 : 1953 Cr LJ 1862.

——At the time of the final order the Magistrate is not required to go into the question regarding breach of the peace. The only thing that he has got to see is as to which party is proved to be in possession of the subject matter of dispute at the time of the preliminary order or within two months before it. Of course, under sub-sec. (5) a party is not precluded from showing that no such dispute, as is contemplated by sub-section (1) exists or had existed, and if the Magistrate is satisfied he may cancel the preliminary order. Unless such a question is raised, the Magistrate need not bother himself about the question regarding breach of the peace. (Sharma, J.) Bage Khan v. Baga Ram.

1953 RLW 516.

——S. 145 (1)—Whether preliminary order under S. 145 (1), even though erroneous in some respects cannot be amended or confirmed by subsequent legal proceedings—(Quaere). (Govinda Menon, J.) Venkatachalam Chetty v. Ramaswamy Chetty.

AIR 1949 Mad 563 : 61 MLW 848 : 1949 MWN 184 : (1949) 1 MLJ 646 : 1949 AWR Sup 49 and 60 : 50 Cr LJ 866.

20. Forcible and wrongful dispossession "within two months next before date of order" —Sub-S. 4, proviso (1).

(a) Applicability of proviso (1).
(b) Computation of period.
(c) No preliminary order passed.
(d) Preliminary order beyond two months.

20. Forcible and wrongful dispossession "within two months next before date of order"—Sub-S. 4, proviso (1).

(a) Applicability of proviso (1).

——When there was some evidence to indicate that the applicant had been forcibly and wrongfully dispossessed, the absence of a specific finding on the point by the Magistrate does not make his order liable to be set aside. (Nigam, J. C.) Sm. Dakhan v. Madholal.

AIR 1953 Ajmer 74 : 1953 Cr LJ 1788.

——Dispossession —Rival landlords —Land in possession of tenants — Notional possession of landlord is not dispossession of other. (Narasimham, J.) Jalumuru Kamaraju v. Kenguwa Suryanarayana.

AIR 1953 Orissa 99 : ILR (1951) Cut 576 : 18 Cut LT 207 : 1953 Cr LJ 737.

——Onus of proof.

Where in proceedings under S. 145, instituted in January 1949, it is found that one party were in

CRIMINAL P. C. (V of 1898), S. 145 — 20. Forcible and wrongful dispossession "within two months next before date of order" — Sub-s. 4, proviso (1)— (a) Applicability of proviso (1)

possession of the land in dispute in the middle of 1947 the onus is on the other party to show conclusively that they had succeeded in dispossessing them within more than 2 months prior to the institution of the proceeding. (Shearer, J.) J. W. Brouke v. Kamleshwari Narain Singh.

AIR 1950 Pat 472.

——S. 145 (4)— Proviso— Finding that party in possession had come into possession forcibly— No finding that opposite party had been dispossessed— Proviso does not apply—Possession should be delivered to person in possession—Order under S. 146 (1) cannot be passed.

Proviso to S. 145 (4) becomes applicable only if a Magistrate can come to a definite finding that any particular party had been dispossessed within a period of two months, next preceding the order under S. 145 (1). The effect of the proviso is that it enables a party to be treated in possession on the date of the order though actually he may be found to have been dispossessed before that date. It is only if such a party can be treated or deemed to be in possession on the date of the order, that the person actually in possession can be said not to have been in possession on the date of the order under S. 145 (1).

Where there was a definite finding by the Magistrate that one of the parties had come into possession before the order under S. 145 (1), Criminal P. C., was passed, though it is subjected to a rider, that he had taken possession forcibly, but there is no finding by the Magistrate that he had taken forcible possession from any one of the opposite parties who were the applicants before the Magistrate:

Held, that there being no party who could be entitled to the benefit of the proviso, it could not be said that the party found in actual possession was not in possession on the date of the order. In such a case possession should be directed to be delivered to him. Provisions of S. 146 (1) apply only to cases where a Magistrate is not able to come to a definite conclusion as to which party was in possession on such a date. (Seth, J.) Ram Naresh v. Rex.

AIR 1949 All 97 : 1948 A W R H C 196 : ILR (1949) All 125 : 49 Cr LJ 751.

——S. 145 (4), Proviso—Magistrate deciding complainant to be in possession at date of order under Sub-S. (1)—Whether should see if any of parties had been dispossessed within two months next before the order.

A perusal of the proviso together with Sub-S. (4) of S. 145, Criminal P. C., leaves no room for doubt that the procedure prescribed in the proviso is not mandatory and that if a Magistrate chooses to act under Sub-S. (4), that is to say, decides the question which of the parties was in possession at the date of the order made under Sub-S. (1), it is not necessary to see whether or not any of the parties has been dispossessed within two months next before the date of the order. Where the Magistrate had decided on the evidence before him that the complainants are in possession, no question arises as to who was in possession two months before the passing of the preliminary order. (Zia-Ul Hasan, J.) Mohammad Nasir v. Dwarka Singh.

AIR 1939 Oudh 31 : 1938 OWN (CC) 1018 (2) : 11 RO 81 : 14 Luck 240 : 177 IC 974 : 39 Cr LJ 963.

——Main order is to be based on possession at date of preliminary order.

There is no provision allowing for extension of the period of two months laid down in S. 145, Criminal P. C., whatever the cause of delay may be. The proviso to S. 145 is only permissive and not a mandatory one. The Magistrate may treat the party forcibly and wrongfully dispossessed within two months as if he had been in possession. The main order is to be based on possession at the date of the preliminary order and the words used with reference to it are positive. (Gruer, J.) Emperor v. Sunderlal.

AIR 1936 Nag 271 : 9 RN 179 : ILR (1937) Nag 174 : 167 IC 359 : 38 Cr LJ 375.

——Under the proviso to S. 145 (4) if it appears to the magistrate that any party has within two months next before the date of such order, been forcibly and wrongfully dispossessed he may treat the party so dispossessed as if he had been in possession at such date. (Panckridge and Patterson, JJ.) Meher Ali Mia v. Bidyut Baran Mukerjee.

AIR 1933 Cal 424 : 37 CWN 652 : 34 Cr LJ 810.

——Where there has been no dispossession the case is not covered by S. 145 (4) and the question of dispossession does not arise. (Ferrers, J. C. and Mehta, A. J. C.) Natho Khan v. Emperor.

AIR 1932 Sind 145 : 34 Cr LJ 216.

——The mere ouster of people with no title to the land without using any physical violence and removing of things which had no right to be on the land cannot be said to be an unlawful entry on the land, and if person so taking possession is dispossessed by force from the land within two months of the order under Sub-S. (2), he is entitled to be restored to possession. (Chotzner and Duval, JJ.) Collector of Howrah v. Santok Das.

AIR 1927 Cal 261 : 44 CLJ 593 : 99 IC 1010 : 7 AI Cr R 383 : 28 Cr LJ 210.

——Sub-section (4) makes it incumbent on the Magistrate to decide which of the parties was in possession on the day the preliminary order was passed and the proviso only applies if any other party had been forcibly dispossessed within two months thereof. 11 ALJ 305, Dist. (Findlay, Offg. J. C.) Nago v. Atmaram.

AIR 1926 Nag 371 : 91 IC 244 : 27 Cr LJ 68.

CRIMINAL P. C. (V of 1898), S. 145 — 20. Forcible and wrongful dispossession "within two months next before date of order" — Sub-s. 4, proviso (1)— (a) Applicability of proviso (1)

——Where more than two months have elapsed from the death of the last person in possession there is no forcible dispossession within two months within the meaning of S. 145. (Spencer, J.) Bulkis Bivi v. Nagoor Kanni Rowther.

AIR 1915 Mad 1105 : 17 MLT 225 : 1915 Mad WN 267 : 16 Cr LJ 284.

20. Forcible and wrongful dispossession "within two months next before date of order"—Sub-S. 4, proviso (1).

(b) Computation of period.

——Ss. 145, 144— Two months should be counted backwards from order under S. 144.

Where the proceeding under S. 144 is intended to be no more than a fore-runner of a proceeding under S. 145, the two months to be considered under the first proviso to Sub-S. (4), should in such cases be counted backwards from the date of the order under S. 144. Otherwise, manifest injustice might result to a party forcibly and wrongfully dispossessed in this period but more than two months before the date when the proceeding under S. 145 is actually drawn up. (Dhavle, J.) Gobardhan Das v. Suresh Chandra Mukherji.

AIR 1942 Pat 489 : 9 BR 91 : 15 RP 180 : 203 IC 521 : 44 Cr LJ 95.

——Ss. 145 (1), (4) and 144—Period of possession—Injunction.

In a proceeding under S. 145, a party who entered into possession and retained possession under S. 144 should be declared to be entitled to possession until evicted in due course of law,; the period during which the injunction under S. 144 was in force against his opponent cannot be excluded from calculation of the period of two months. (Teunon and Beachcroft, JJ.) Srinath Roy v. Probhat Chandra.

AIR 1917 Cal 100 : 38 IC 333 : 18 Cr LJ 301.

20. Forcible and wrongful dispossession "within two months next before date of order"—Sub-S. 4, proviso (1).

(c) No preliminary order passed.

——Where no order under S. 145 (1) has been passed the first proviso to S. 145 (4) cannot be resorted to. (Broadway, C. J.) Ghulam Hussain v. Sajawal Shah.

AIR 1933 Lah 143 : 1933 Cr C 241 : 34 PLR 265 : 142 IC 430.

20. Forcible and wrongful dispossession "within two months before date of order" —Sub-S. 4, proviso (1).

(d) Preliminary order beyond two months.

——S. 145 (4)—Restoration of possession under—Party in possession within 2 months of the order.

The question of possession has to be determined with reference to a specified point of time, viz. the date of the initial order or in case of forcible dispossession, a date within 2 months next preceding such order. The party complaining disturbance of possession which is likely to give rise to a breach of the peace must show that it was in possession within two months of the initial order required to be passed under S. 145, Cr. P. C. In case of a forcible dispossession more than 2 months prior to preliminary order, possession of the opposite party must be maintained. (Lakshmi Narain J. C.) Elehus Mia v. Ali Ahmed Kazi.

AIR 1952 Tripura 31 : 1953 Cr LJ 93.

——S. 145 (4) Proviso (i) — 'Such possession' — Meaning of — Dispossession effected more than two months prior to preliminary order —Restoration of possession.

The words 'such possession' in S. 145 (4) mean actual physical possession as distinguished from constructive possession.

Proviso (1) to S. 145, Cr. P. C., is discretionary and the discretion is limited by the express words namely, that it shall not be exercised in a case where the dispossession forcibly and wrongfully effected has lasted for more than two months next before the preliminary order. The legislature has fixed the maximum period within which the party wrongfully dispossessed can get the benefit of the section, at two months and a Magistrate would be acting clearly beyond his jurisdiction if he restores a party who has been forcibly dispossessed more than two months prior to the preliminary order merely because there was a great delay in making the enquiry and drawing up the preliminary order.

The starting point from which the period of two months mentioned in the proviso will be counted is not the date when a private party complains or when the police report is submitted but the date when the Magistrate after being satisfied as to the apprehension of breach of peace passes the preliminary order. (Ray C. J.) Janama Bhoi v. Draupadi Bhoiani.

AIR 1952 Orissa 26 : 17 Cut LT 270 : 1952 Cr LJ 148.

——First proviso — "Before date of such order" means before date of preliminary order.

"Before the date of such order" in the first proviso to S. 145 (4) means the date of the preliminary order. No appreciable time should elapse between the presentation of the complaint or the receipt of the police report and the passing of the preliminary order, and by applying the legal fiction of nunc pro tunc the preliminary order should be deemed to have been made when the Magistrate takes cognizance of the matter and satisfies himself about the urgency. (Govinda Menon, J.) Narayana v. Kesappa.

AIR 1951 Mad 500 : 1951-1 MLJ 102 : 1951 MWN 53 : 1951 MWN Cr 1 : 64 MLW 242 : ILR (1951) Mad 951 : 1951 AWR (Sup) 49 : 1952 Cr LJ 126.

——Dispossession within two months next before preliminary order—Provision is mandatory.

Provisions of S. 145 (4), Proviso (1) that the Magistrate should make the order for possession

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in favour of the complaining party if he had been forcibly and illegally dispossessed within two months before the date of preliminary order, are mandatory. Consequently preliminary order beyond two months from the date of the alleged dispossession, is bad and would be vacated. (Sharma J.) Bhairon Singh v. Nain Singh.

1952 RLW 441 : ILR (1952) 2 Raj 256.

——First proviso — Delay of Courts in passing order within 2 months of forcible dispossession.

So where the dispossession has taken place on the date the application was actually put in, the order under S. 145 (4) would be illegal if it is passed beyond the period of two months of the dispossession.

On a strict construction of the section, no order can be passed in favour of the party who was dispossessed even though forcibly and wrongfully but more than two months before the date of the order. If delay is caused by the act of the Court even then the express provision contained in cl. (4) cannot be disregarded. The inherent powers of the Court to do justice cannot be exercised in disregard of the express provision contained in the Code. (Thadani C. J. and Ram Labhaya, J.) Tolan Kalita v. Bhuban Chandra.

AIR 1951 Assam 161 : ILR (1952) 4 Assam 23 : 52 Cr LJ 1449.

——"Within two months" in S. 145(4), construction.

The words "within two months" should be literally construed and not liberally. When the words are precise and unambiguous, the Court is precluded from giving any interpretation which is not in accordance with the literal meaning of the words used. Case law discussed. (Sharma and Bapna JJ.) Bholia v. Govinda.

1946 JLR 420.

——S. 145 (4), Proviso 1—Period, if extendable.

The period of two months prescribed by the proviso under no circumstances can be extended.

Therefore, when the B party were in possession when the petitioner filed his petition under S. 145 and had been in possession for four months when the preliminary order was passed, the B party are entitled to possession until evicted in due course of law. (Happell, J.) Arunachala Goundan v. Chinnadurai.

AIR 1945 Mad 216 : 1945 MWN 109 : (1945) 1 MLJ 210 : 58 MLW 207 : 1946 Mad Rul 18 : 220 IC 451 : 46 Cr LJ 767.

——Two months' period, when begins.

Two months mentioned in the proviso to Cl. (4) of S. 145 mean two months from the date of the preliminary order and not two months from the date of the complaint. (Ghulam Hasan,J.) Mahmood Beg v. Ehsan Beg.

AIR 1941 Oudh 515 : 1941 OWN 848 (CC) (2) : 14 RO 69 : 1941 AWR (CC) 247 : 195 IC 236 : 42 Cr LJ 710.

CRIMINAL P. C. (V of 1898), S. 145 — 20. Forcible and wrongful dispossession "within two months next before date of order" — Sub-s. 4, proviso (1)— (d) Preliminary order beyond two months

——Words of proviso to Sub-S. (4) mean two months before date of preliminary order under Sub-S. (1).

An inquiry under Sub-S. (4) of S. 145, Cr. P. C., is as to possession on the date of the preliminary order under Sub-S. (1) and the words of the proviso "within two months next before the date of such order" are precise and unambiguous. These words afford no scope for holding that in those cases where a Magistrate does not make a preliminary order within two months of the dispossession, the party complaining is still entitled to proceed under S. 145. Those words mean two months before the date of the preliminary order. (Lobo, J. C. and O'Sullivan, J.) Muhammad Ali v. Shamsul Haq.

AIR 1940 Sind 33 : 12 RS 255 : ILR (1940) Kar 162 : 187 IC 636 : 41 Cr LJ 486.

——Period of two months, if should be counted from the date of the complaint or from the date of the preliminary order.

In view of the proviso to Sub-Cl. 4 of S. 145, Criminal P. C., a Magistrate cannot make an order under S. 145 if it is found that the person making an application under that section had been dispossessed more than two months before the date on which the Magistrate issued a notice as required by the provisions of S. 145, Cl. 1, Criminal P. C. A person complaining of forcible dispossession under S. 145 cannot claim the benefit of that section if the dispossession took place more than two months prior to the date of the preliminary order under Cl. 4, S. 145 and not from the date of the complaint. (Rachhpal Singh, J.) Meharban Singh v. Bhola Singh.

AIR 1935 All 35 : 7 RA 346 : (1934) ALJ 1157 : 4 AWR (HC) 929 : 57 All 488 : 152 IC 496 : 36 Cr LJ 102.

——S. 145 (4), Proviso — Forcible dispossession within two months of complaint but more than two months before date of preliminary order — Applicability of proviso.

Under the proviso to Sub-S. (4) of S. 145, Cr. P. C., a Magistrate cannot treat a party who has been forcibly dispossessed more than two months before the date of the preliminary order as if he had been in possession on the date of the preliminary order, even if his dispossession had taken place within two months of the date of his complaint. The words 'within two months next before the date of such order' clearly mean within two months of the date of the preliminary order. (Macnair, Offg. C. J.) Emperor v. Parshram.

AIR 1931 Nag 38 : 26 NLR 377 : Ind Rul (1931) Nag 57 : 130 IC 153 : 32 Cr LJ 476 (1).

——"Two months" from the date of the order mean two months from the date of the order and not two months from the date of the complaint. AIR

CRIMINAL P. C. (V of 1898), S. 145 — 20. Forcible and wrongful dispossession "within two months next before date of order" — Sub-s. 4, proviso (1)—(d) Preliminary order beyond two months

1929 Mad 198, Diss. from. (Stuart, C. J.) Emperor v. Baijnath.

AIR 1929 Oudh 526 : 5 Luck 440 : IR 1930 Oudh 219 : 124 IC 363 : 6 OWN 957 : 1929 Cr C 641 : 31 Cr LJ 678.

——A Magistrate cannot take into consideration the effect of an alleged dispossession more than two months prior to the date of his order; he is required to decide which of the parties between whom a dispute exists is in possession of the subject of the dispute at the time when the Magistrate decides the question of possession. 15 Bom 152, Foll. ; 4 Cal 417, Doubted. (Percival, J. C. and Aston, A. J. C.) Maji v. Emperor.

AIR 1930 Sind 52 : 120 IC 90 : 1930 Cr C 68 : 30 Cr LJ 1124.

——Magistrate delaying preliminary order beyond two months, though bona fide—Complaint is still entitled to benefit of S. 145.

Where a person who is entitled to complain of forcible dispossession goes before a Magistrate and complains of forcible dispossession, if for no reason or any fault of his, the Magistrate does not pass a preliminary order at once, but delays the passing of the order though it may be bona fide, the person who complained to him of forcible dispossession should not be deprived of the benefit of S. 145 by reason of the delay caused in the Magistrate's Court. AIR 1927 Mad 816, Foll. (Devadoss, J.) Srinivasa Reddy v. Dasaratha Rama Reddy.

AIR 1929 Mad 198 : 52 Mad 66 : 28 MLW 504 : 113 IC 336 : 2 M Cr C 28 : 11 A I Cr R 551 : 50 MLJ 33 : 30 Cr LJ 144.

—When the party dispossessed moves Court to take action and a delay of over two months occurs before Court makes order, the party dispossessing cannot be retained in possession on that ground. (Wallace, J.) Krishnam Raju v. Chintalaswami Naidu.

AIR 1927 Mad 816 : 8 AI Cr R 574 : 104 IC 110 : 28 Cr LJ 782.

——S. 145 (1) and (4)—"Within two months next before date of order".

The formal order issued under Cl. (1) more than two months after dispossession is illegal and, therefore, it is impossible to apply Cl. (4) of the section. This in itself is enough to invalidate proceedings. (Kensington, J.) Mt. Lakhan v. Mt.Begam.

1 PWR Cr 20 : 4 Cr LJ 425 (Lah).

21. "Forcibly and wrongfully"—Meaning of.

——It is not necessary that actual force or violence should be used to some person or persons before dispossession can be said to be 'forcible'. When the dispossession is effected by a show of criminal force sufficient to intimidate those in possession and to deter them from resistance, the latter are said to have been forcibly dispossessed. Thus where the quarrelsome attitude of the ladies appeared to have frightened the applicant, it could be held that the applicant was forcibly dispossessed. (Nigam, J. C.) Sm. Dakhan v. Madholal.

AIR 1953 Ajmer 74 : 1953 Cr LJ 1788.

——Actual force need not be used—Misrepresentation and improper threats are sufficient to constitute forcible dispossession — Petitioner in possession through his servants — Other party getting notice issued by District Magistrate on incorrect representations — Petitioner's servants made to vacate by showing notice— Eviction is forcible.

It is not in all cases that actual force should be used to make an eviction a forcible one. Misrepresentation and improper threats are sufficient to constitute forcible dispossession.

Where the petitioner was in possession of a building through his servants and the other party obtaining a notice from the District Magistrate on incorrect representation, made the servants vacate the building by showing the notice to them, it was held that there was a forcible eviction of the person who was entitled to be in possession. (Kuppuswami Aiyar, J.) Amritlal N. Shah v. Nageshwara Rao.

AIR 1947 Mad 133 : 1946-2 MLJ 349 : 59 MLW 645 : 1946 MWN 692 : 229 IC 530 : 48 Cr LJ 435.

——Ss. 145 and 144— Person in possession temporarily dispossessed by ex parte order under S. 144 and another put in possession—Application by person so dispossessed to set aside order dismissed on ground of expiry of order — Re entry by him, if wrongful dispossession of person put in possession under ex parte order.

A Magistrate is not bound to order possession to be given to the person who was in possession two months before the passing of the preliminary order; but under Proviso 1 to Cl. (4) of S. 145, Criminal P. C., he may treat the party dispossessed forcibly and wrongfully within two months as having been in possession on the date of the preliminary order. If a person in possession of property is temporarily dispossessed by an ex parte order under S. 144 and his application to set aside that order is dismissed only on the ground that the time for which the order was in force had already expired, the re-entry into possession by the person so dispossessed cannot be wrongful dispossession of the person who obtained temporary possession on account of the ex parte order. (Horwill. J.) Pachayappa Udayan v. Ponna Goundan.

AIR 1943 Mad 402 : (1943) 1 MLJ 259 : 1943 MWN 178 : 56 MLW 220 : 16 RM 28 : 206 IC 630 : 44 Cr LJ 557.

——S. 145 (6) — Railway authorities establishing right under S. 122, Railways Act (IX of 1890), to eject trespasser on Railway property — Person ejected, if forcibly and wrongfully dispossessed—Magistrate, whether can pass order under S. 145 (6) declaring Railway authorities entitled to possession.

CRIMINAL P. C. (V of 1898), S. 145 — 21. "Forcibly and wrongfully"—Meaning of

Where the Railway authorities have established their right under S. 122 (2), Railways Act, to eject a person as a trespasser from Railway property, in other words, to dispossess him, it can in no way be said that he was forcibly and wrongfully dispossessed by the Railway authorities. Hence the Magistrate is justified in passing an order under S. 145 (6) declaring the Railway authorities entitled to possession of that property. (Davis, J. C. and Weston, J.) Hotchand Ramchand v. Emperor.

AIR 1940 Sind 167 : 13 RS 114 : ILR (1940) Kar 504 : 190 IC 746 : 42 Cr LJ 27.

——Land cultivated by heirs of zamindar on his behalf—Persons squatting on such land — Heirs declaring to be heirs of such person in respect of some land—Whether amounts to forcible ousting of zamindar.

Where, after a person has squatted on the land of zamindar cultivated by the heirs of zamindar on his behalf, the heirs declare they are heirs of that person in respect of the same land, such a declaration in such circumstances cannot amount to forcible ousting of the zamindar. (Lobo, J. C. and O'Sullivan. J.) Muhammad Ali v. Shamsul Haq.

AIR 1940 Sind 33 : ILR (1940) Kar 162 : 12 RS 255 : 187 IC 636 : 41 Cr LJ 486.

——The word "wrongful", in S. 145, Cr. P. Code, does not imply absence of legal right—Entry by force even by one having legal right to possession is wrongful.

Per Marten, J.—The word "wrongful" does not involve the idea that the dispossessor has no legal right to the possession of the property. Even a rightful owner, for instance, a landlord who is entitled to possession in a case where a tenant is wrongfully holding over, can only take possession peaceably. If his possession is opposed, however wrongfully, then the landlord has no right to break down the doors, to assault the inmates and to turn them vi et armis out of the building. He must go to the Civil Court and get the necessary warrants or ejectment orders to enable, if necessary, the proper authorities to effect a forcible entry or a forcible ejectment according to law. There is clear distinction between forcible entries which are rightful and forcible entries which are wrongful, and that depends on whether the person entering was entitled to use force, and not merely on whether he had a legal right to possession. If, for instance, a landlord came armed with a writ or a warrant in his favour to eject his former tenant then although force might in the end be used, it would not be a wrongful dispossession. If, on the other hand, he took the law into his own hands and used force without any such legal sanction by means of warrant, then that would be an instance where he would have forcibly and wrongfully dispossessed his former tenant.

CRIMINAL P. C. (V of 1898), S. 145 — 21. "Forcibly and wrongfully" — Meaning of

Per Pratt, J.—The phrase "forcibly and wrongfully" has the same meaning as forcible entry without due warrant of law under the English statute. A forcible entry must be wrongful unless it is in execution of a legal process. The word "wrongfully", therefore, means no more than "otherwise than in due course of law" in S. 9 of the Specific Relief Act. (Fawcett and Madgavkar, JJ.) Bai Jiba v. Chandulal.

AIR 1926 Bom 91 : 94 IC 709 : 27 Bom LR 1353 : 27 Cr LJ 661.

——Dispossession should be wrongful as well as forcible. (Adami and Bucknill, JJ.) H. V. Low & Co., Ltd. v. Manindra Chandra.

AIR 1925 Pat 33 : 84 IC 332 : 3 Pat 809 : 26 Cr LJ 268.

——S. 145 (4) Proviso 1.—Wrongful dispossession—What is— Forcible when.

A dispossession otherwise than in due course of law, is wrongful. To make it a forcible dispossession intimidation enough to frighten those in possession from resisting the dispossession is sufficient. There need not be actual force or violence used. (Teunon and Ghose, JJ.) Sita Nath v. Harvey.

AIR 1921 Cal 553 : 25 CWN 601 : 33 CLJ 353 : 63 IC 333 : 22 Cr LJ 637.

——S. 145 (4) and (1) — Period of possession — Wrongful and forcible dispossession.

Where in a proceeding under S. 145, Cr. P. C., one of the parties within two months from the commencement of the proceeding obtained sanction from the Municipality and proceeded to dig a tank on the land in dispute to the exclusion of another party in possession. Held, that it was forcible and wrongful dispossession within the meaning of Sub-S. (4) (1) of S. 145. (Chitty and Walmsley, JJ.) Manmotha Nath v. Ganga Giri.

AIR 1917 Cal 173 : 20 CWN 978 : 36 IC 129 : 17 Cr LJ 449.

22. Foundation of jurisdiction.

See (1) Note 26—"Is satisfied".
(2) Note 30—Likely to cause a breach of the peace.
and
(3) Note 44—Preliminary order.

23. Fresh proceedings.

See Note 16.—Effct of order under the section.

24. "Hear the parties".

——Both parties absent.

When both the parties are absent, the proper order to be passed would be one under S. 146 and not S. 145 (5). (Mallappa, J.) Venkategowda v. Appajigowda.

AIR 1952 Mys 4 : 31 Mys LJ 162 : 1952 Cr LJ 111.

——Ex parte final order — Power of Magistrate to reopen case.

CRIMINAL P. C. (V of 1898), S. 145—24. "Hear the parties"

Where a party to a proceeding under S. 145, Criminal P. C., prays for reopening of the case after setting aside an ex prate order, the Magistrate should inquire into the allegations as to the absence of the service of notice, although the previous order was passed after a written return of the service of the notice. (Ram Labhaya, J.) Thanuram v. Tankeshwar.

AIR 1951 Assam 141 : ILR (1951) 3 Assam 24 : 52 Cr LJ 1406.

——Proceedings are of summary nature — Judgment six months after conclusion of hearing — Judgment by successor Magistrate on arguments heard by predecessor and not himself—Order set aside.

Proceedings under S. 145 are intended to be summary to preserve the peace. The hearing was concluded on the 13th December 1946 and an adjournment for argument was granted. The matter was then postponed for one reason or another and the judgment was not finally delivered until June 1947—nearly six months after the conclusion of the hearing. The judgment was written by the successor Magistrate who had not heard the arguments:

Held that though the Magistrate in suitable cases acts on evidence recorded by his predecessor, he cannot act upon the arguments made before his predecessor which he has never heard and the order could not therefore be upheld. (Meredith, J.) Jagarnath Singh v. Francis Kharia.

AIR 1948 Pat 414 : 49 Cr LJ 704.

——Wrong date of hearing given—Ex parte proceedings — Right to cross-examine subsequently — Refusal—Legality of.

Proceedings were instituted against a person under Cr. P. Code, S. 145. A copy of an order containing a wrong date of hearing was delivered to him. He attended on the date mentioned in the copy but the correct date was not even then given to him. When he subsequently appeared, after certain proceedings had taken place ex parte, he was not permitted to cross-examine the complainant and the witnesses examined the same day.

Held, that the trying Magistrate exercised a wrong discretion in not allowing the party to cross-examine the complainant and the witnesses. (Percival, J. C. and Aston, A. J. C.) Maji v. Emperor.

AIR 1930 Sind 52 : 120 IC 90 : 1930 Cr C 68 : 30 Cr LJ 1124.

——Order without notice.

The Magistrate has no jurisdiction to decide the question of actual possession without giving the claimants an opportunity of being heard. (Ayling and Coutts-Trotter, JJ.) Velu Malavarayan v. Kuppuswami Pillai.

AIR 1920 Mad 233 : 12 LW 315 : 59 IC 378 : 22 Cr LJ 90.

CRIMINAL P. C. (V of 1898), S. 145—24. "Hear the parties"

——S. 145 (4)—"Hear the parties."

The Magistrate must hear the evidence supplied by the parties and must hear the arguments of their pleaders; otherwise he cannot be said to have complied with the imperative provisions of law in this respect. (Sultan Ahmed, J.) Ghulam Sibtani v. Khaniz Khatoon.

AIR 1920 Pat 383 : 5 Pat LJ 246 : 1 Pat LT 608 : 57 IC 92 : 21 Cr LJ 572.

——S. 145 (a)—Refusal to hear arguments— Validity—Jurisdiction.

A refusal to hear arguments vitiates the final order under S. 145 as being in excess of jurisdiction. The procedure under S. 145 should be regarded on all points as that prescribed for summons cases. (Jwala Prasad, J.) Dhabari v. Gorakh Prasad.

AIR 1918 Pat 301 : 5 Pat LW 103 : 46 IC 517 : 19 Cr LJ 741.

——Omission to inquire into question of possession—Where in a proceeding under S. 145, one of the parties is absent though served with notice and the Magistrate on the written statement of the other party declares them to be in possession the order is without jurisdiction. It is the duty of the Magistrate to inquire into the question of possession. (Rampini and Sharfuddin, JJ.) Nojem Mirdha v. Jamalali Khalifa.

12 CWN 771 : 8 Cr LJ 27.

25. Inquiry.

——S. 145 (6)— Existence of likelihood of breach of peace—Further enquiry.

On the existence of apprehension of breach of peace, the further enquiry relates only to possession under S. 145 (6). (Suryanarayana Rao. J.) Hanmantha v. Hanifabi.

AIR 1953 Hyd 185 : ILR (1952) Hyd 346 : 1953 Cr LJ 1114.

——Ss. 145, 146 and 148 — One or neither party claiming to be in possession —Procedure.

If only one party asserts its possession and the other party does not claim to be in possession, it would be open to the Magistrate to pass the final order in favour of the former party without recording any evidence : 7 CWN 642; 31 Cr LJ 190; 5 CWN 7 and 30 Cal 918, Dissent.

When neither party files a written statement claiming to be in possession, again there arises no question of recording evidence of possession. In such a case the Magistrate can certainly not pass an order in favour of either party declaring it to be in possession, unless he gets a local inquiry made under S. 148 and it is found that that party is in possession. He can order attachment under S. 146 on the ground that in the absence of any claim to possession and evidence about possession he is unable to decide which party is in possession. If he does not get a local inquiry made, he is bound to pass an order under S. 146 because there is no other order that can be passed. (Desai, J.) Sm. Safdari Begam v. Ashfaq Husain Khan.

CRIMINAL P. C. (V of 1898), S. 145—25. Inquiry

AIR 1952 All 538 : 1950 AWR 367 : 1950 ALJ 292 : ILR (1951) 1 All 709 : 1952 Cr LJ 637.

——Ss. 145 and 146 —Procedure at inquiry — Powers and duties of Magistrate.

In a proceeding under S. 145, Criminal P. C., a Magistrate has no jurisdiction to issue a warrant to compel the attendance of a party in such proceeding. Similarly the section does not enable him to compel the parties to file written statements. He is, however, bound to issue a notice calling upon them to appear before Court and to file statements within time fixed by him. He may in proper cases give more time to file statements. The discretion to extend time must be exercised judicially. The parties however have no right under the section to obtain time, and to hold that the Magistrate cannot pass any order unless statements are filed would place the Magistrate under the mercy of the parties. If the parties do not appear or if they appear and do not file written statements within the time fixed or within such time as the Court in its discretion extends, nothing comes in the way of a Court passing an order straightway under S. 146, Criminal P. C., as in such a case he is unable to satisfy himself as to which of the parties was in possession of the subject-matter of the dispute. He cannot, however, pass an order under S. 145, Criminal P. C., unless he has material to come to the conclusion that one of the parties is in possession on evidence taken by him, if such a course is found possible and feasible, though the parties have failed to file any statements and to adduce evidence.

The proper procedure for a Magistrate, therefore, is to post the case for evidence and to record the evidence of all witnesses present on that day and in case all the witnesses are not examined to take up the case on the very next day and proceed to orders. It does not mean that no adjournment could be given to enable the parties to adduce evidence in proper cases. But considering the nature of the proceedings the Magistrate would do well to exercise the discretion in granting adjournments only in proper cases. If parties or any one of them do not appear before Court and adduce evidence even after having one or two chances, the Magistrate is at liberty to consider the evidence available and to pass an order under S. 145, Criminal P. C. However, if no evidence is forthcoming even after one or two chances are given, nothing comes in his way of passing an order under S. 146, Criminal P. C., since he is in such cases unable to satisfy himself as to which of the parties was in possession of the property in dispute. (Maliappa, J.) Venkategowda v. Appajigowda.

AIR 1952 Mys 4 : 31 Mys LJ 162 : 1952 Cr LJ 111.

——Enquiry to be concluded with least possible delay.

It is highly desirable that enquiries started under S. 145, Criminal P. C., should be conducted and concluded with the least possible delay. (Nagarkar, J. C.) Hansa v. Ranjit.

CRIMINAL P. C. (V of 1898), S. 145—25. Inquiry

AIR 1951 Ajmer 86 : 1948 AMLJ 19 : 52 Cr LJ 1472.

——Inquiry under Sub-S. (4), whether obligatory after passing order under Sub-S. (1)—Order under Sub-S. (6), if must follow subsequently.

Sub-Sections (1), (4), (5) and (6) of S. 145, Criminal P. C., are complementary. Once an order has been passed under Sub-S. (1), it is obligatory for a Magistrate to make the inquiry provided for in Sub-S. (4) subject only to the obligation under Sub-S. (5) to terminate the proceedings in the circumstances therein contemplated. The words of Sub-S. (4) "the Magistrate shall then.." are mandatory. The word 'then' refers to the stage when in compliance with the order under Sub-S. (1), the parties have put in their written statements and attended the Court. On the completion of the inquiry under Sub-S. (4), a final order under Sub-S. (6) must follow, it being obvious that the holding of the said inquiry is a condition precedent to the making of the order under Sub-S. (6). An order under Sub-S. (6) cannot be made without having held any inquiry under Sub-S. (4). (Lobo, J. C. and O'Sullivan, J.) Muhammad Ali v. Shamsul Haq.

AIR 1940 Sind 33 : ILR (1940) Kar 162 : 12 RS 255 : 187 IC 636 : 41 Cr LJ 486.

——Procedure to be followed in cases under S. 145.

In proceedings under S. 145, Criminal P. C., Courts should only follow the procedure prescribed for summons cases where it is convenient to do so. There is no provision in the Code which prescribes that the same procedure should be followed and the provisions of S. 145 clearly indicate that the same procedure cannot always be followed throughout. (Bennett, J.) Raquma v. Ghirrai.

AIR 1940 Oudh 22 : 12 RO 142 : 1939 AWR (CC) 277 : 1939 OWN (CC) 974 : 184 IC 751 : 41 Cr LJ 96 (2).

——The parties originally mentioned and any others who may come in later should be ranged on one side as the first party, the second party and so forth. (Hallifax, A. J. C.) Emperor v. Mt. Fhutanja.

AIR 1925 Nag 142 : 81 IC 933 : 25 Cr LJ 1109.

——Defect in procedure—Evidence not read.

Omission to read over the evidence to the witness does not vitiate the order under S. 145. (Foster, J.) Sondi Singh v. Sri Govind Singh.

AIR 1924 Pat 786 : 76 IC 25 : 5 PLT 237 : 2 Pat LR (Cr) 108 : 25 Cr LJ 89.

——Ex parte proceedings.

It is incumbent upon Magistrate to dispose of proceedings under S. 145 as quickly as possible and with due regard to the rules of procedure prescribed by that self-contained section. The procedure for the trial of a case under S. 145 is that laid down for the trial of summons cases

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where witnesses are examined, cross-examined. and re-examined, and then discharged. The Magistrate is wrong in treating the case as if it was a warrant case.

The present case was prolonged from day to day. The Magistrate examined the witnesses in chief and postponed their cross-examination till after the first party had closed its case. When the cross examination of one of the witnesses of first party had to be resumed the second party did not appear in time. The Magistrate then disposed of the case ex parte holding that the evidence adduced by the first party was sufficient to prove its possession over the lands in question, Held, the order was wrong. (Jwala Prasad and Coutts, JJ.) Moti Singh v. Dhanukdhari.

AIR 1923 Pat 53 : 73 IC 339 : 24 Cr LJ 595.

——Burden of proof —Right to begin— Question of possession.

Though there is nothing in S. 145 to suggest which party should begin the case it is usual for the second party to begin his evidence. (Das J.) Ram Prasad Sahu v. Emperor.

AIR 1920 Pat 520 : 54 IC 616 : 21 Cr LJ 136.

——Dispute relating to several items of property —Lumping items together—Legality.

A decision under S. 145 should not be arbitrary but should be arrived at after giving each of the disputants an opportunity of being heard. A decision arrived at in the absence of parties or either of them is illegal. Where a dispute embraces several items of property, they may be lumped together in a single enquiry provided the disputants are the same for each item. In other cases the Magistrate would have no jurisdiction to decide the question of possession of a number of items after only hearing the parties claiming possession of one or two of them. (Ayling and Coutts-Trotter, JJ.) Velu Malavarayan v. Kuppuswamy Pillay.

AIR 1919 Mad 620 : 12 MLW 315 : 59 IC 378 : 20 Cr LJ 90.

——S. 145, Cl. 4— Evidence taken by subordinate Magistrate on direction from the magistrate — Validity of order passed on such evidence. — A Magistrate, dealing with a case under S. 145, Cr. P. C., has to take evidence, as required by S. 145, Cl. 4 of the Cr. P. C. He cannot refer it to a subordinate Magistrate to take evidence and to report thereon as order based on only the evidence so taken is without jurisdiction. (Wallis, J.) Arumuga Gounden v. Venkata Subbier.

17 MLJ 535 : 3 MLT 108 : 31 M 82 : 6 Cr LJ 384.

26. "Is satisfied".

See also.

(1) Note 30 —Likely to cause a breach of the peace.

(2) Note 44—Preliminary order

CRIMINAL P. C. (V of 1898), S. 145 — 26. "Is satisfied"

and (3) Note 56 — Statement of grounds in the preliminary order.

——Ss. 145, 537—Words "is satisfied" in S. 145.

Where the order under S. 145 (1) merely stated that the Magistrate was satisfied as to the existence of a dispute likely to occasion the breach of the peace because the Station Officer after enquiring had reported to that effect, it was a mere irregularity curable under S. 537 if it has not occasioned a failure of justice. Since no objection was taken on this score when the proceedings were pending before the Magistrate and it was not pointed out how this irregularity had occasioned a failure of justice, the defect was not fatal. (Nigam, J. C.) Sm. Dakhan v. Madholal.

AIR 1953 Ajmer 74 : 1953 Cr LJ 1788.

——Likelihood of breach of peace.

Initiation of proceedings under S. 145 in respect of several plots—No material on record to show that there was likelihood of breach of peace in respect of certain plots — Report showing that some plots were in possession of one party for more than six months prior to order—Proceedings should be quashed as bad. (Mitter and Sen, JJ.) Turu Mahji v. State.

AIR 1953 Cal 397 : 57 CWN 311 : 1953 Cr LJ 908.

——Absence of danger of breach of the peace —Magistrate's further proceedings are without jurisdiction. (Beg, J.) Dulla v. State.

AIR 1953 All 341 : 1952 All WR (HC) 430 : 1953 ALJ 314 : 1953 Cr LJ 740.

——S. 145 (1)—Application to Magistrate for initiation of proceedings under S. 145— Magistrate ordering Sub-Inspector of Police to enquire and report and to attach property in dispute if there was apprehension of breach of peace — Report that there was such apprehension and property attached— Magistrate ordering parties to appear in Court and file their respective claims to property attached—Written statements filed by parties— Applicant applying for withdrawal of application —In circumstances of case, Magistrate held could not be held to have satisfied himself about existence of dispute likely to cause breach of peace— Proceedings having been initiated without jurisdiction, Magistrate held could terminate them at any stage. (P. L. Bhargava J.) Basdeo v. Badri Narain.

AIR 1952 All 186 : 1952 AWRHC 113 : 1952 All Cr R 48 : 1952 Cr LJ 379.

——A Magistrate has no jurisdiction to start a proceeding of possessory character like the one under S. 145 unless he is satisfied that there is likelihood of breach of the peace. In all cases of forcible and wrongful dispossession, the Magistrate is not authorised to start a proceeding under S. 145, Criminal P. C. If the dispossession is a completed act and if there is no further appre-

CRIMINAL P. C. (V of 1898), S. 145 — 26. "Is satisfied"

hension of breach of the peace unless the party dispossessed again comes to take forcible possession of the property, a proceeding under the section shall not be drawn up. (Ray, C. J.) Janama Bhoi v. Draupadi Bhoiani.

AIR 1952 Orissa 26 : 17 Cut LT 270 : 1952 Cr LJ 148.

——Ss. 145, 537—Essentials for exercise of jurisdiction — Magistrate satisfied as to likelihood of breach of peace—Defect in order—Effect.

The jurisdiction of a Magistrate to take action under S. 145 arises from the fact that he has received certain information and that he is satisfied as to the truth of that information. The jurisdiction of the Magistrate does not depend on how he proceeds and he is not deprived of the jurisdiction merely because the procedure is erroneous or defective. Once the Magistrate feels satisfied that there is a likelihood of a breach of peace, an omission to record a formal order as required by Sec. 145 may be treated as a mere irregularity which can be cured under S. 537, if there is no prejudice to the other party. AIR 1933 All 264 (FB), Foll. Case law referred. (Bapna, J.) Mohan Singh v. Kishan Lal.

1952 RLW 236 : ILR (1952) 2 Raj 158.

——S. 145 (1)—Satisfaction of Magistrate.

It is the Magistrate's satisfaction about the existence of any disupte concerning immoveable property likely to cause the breach of peace that is required, and not the satisfaction of his informant or any police officer.

A Magistrate is not bound to give an applicant under S. 145 an opportunity to support his allegations in the application. On receiving an application the Magistrate may call for a police report and on his being satisfied that there is no dispute likely to cause a breach of the peace he may dismiss the application. (P. L. Bhargava, J.) Mahadeo v. Mela Ram.

1951 AWR (HC) 483.

——If the Magistrate is not satisfied about the likelihood of a breach of the peace he has no jurisdiction in the matter and he should not appropriate the functions of a civil Court to resolve the dispute between the parties.

S. 145 comes into play only when a Magistrate is satisfied that a dispute likely to cause a breach of the peace exists between the parties. It is not meant to give him the powers of a civil court to decide the respective claims of the parties. (Dave, J.) Narotam v. Kamlabai.

1951 Raj LW 55.

——Ss. 145 and 537—What gives jurisdiction under S. 145.

Satisfaction of the Magistrate upon the police report or other information as to the existence of a dispute likely to cause breach of peace alone gives jurisdiction. He cannot direct the parties to appear before him without being so satisfied.

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If he does so he acts without jurisdiction and S. 537 cannot cure the irregularity. (Harish Chandra, J.) Khangar v. Jhamman.

AIR 1950 All 734 : 1950 AWR 640 : 1950 ALJ 692.

——The magistrate must be satisfied that there was likelihood of a breach of the peace. No inference can be formed that the Magistrate had applied his mind and had formed an opinion that there was a likelihood of a breach of the peace from the fact that a notice signed by the Magistrate was issued requesting the parties to put in their respective claims, when the notice is prepared in the office and the signature is appended thereto, as a matter of routine work. (Seth, J.) Mt. Ram Piari v. Dankua.

AIR 1949 All 402 : 1948 OWN 424 : 1949 AWR HC 79 : 1949 All Cr Cas 1 : 1949 ALJ 16 : 50 Cr LJ 655.

——Petition by person of position — Duty of Magistrate.

When a petition is filed by a person, who prima facie is a person of respectability and position making allegations that there is a likelihood of a breach of the peace the Magistrate has to make an enquiry and he should satisfy himself on this question before deciding whether to proceed in accordance with the provisions of S. 145. (Sen, J.) B. N. Datta Ray v. Abdul Wahed.

ILR (1948) 2 Cal 73.

——It is the magistrate's duty not only to be satisfied that there is dispute which is likely to cause a breach of the peace but also to make an order in writing stating the grounds of his being so satisfied before he can require the parties to appear before him. If he is not so satisfied he has no jurisdiction under S. 145. (Verma, J.) Mohd. Ishaq v. Emperor.

AIR 1945 All 60 : 46 Cr LJ 504.

——Proceedings—When can be drawn.

It is necessary that the Magistrate should be satisfied at the time of drawing up proceedings under S. 145, Criminal P. C., that there was then existing a likelihood of the breach of the peace arising from disputes between parties as to possession of the land in question. (Edgley and Blank, JJ.) Jnanendra Narayan v. Samed Molla.

AIR 1943 Cal 559 : 16 RC 338 : 209 IC 215 : 45 Cr LJ 107.

——Whether the materials on record, to justify initiation of proceedings are sufficient or not, is entirely for the consideration of the magistrate. The High Court cannot go into the question of sufficiency or otherwise of these materials. (Manohar Lall and Chatterji, JJ.) Shibnarayana Das v. Satyadeo Prasad.

AIR 1943 Pat 44 : 44 Cr LJ 25.

——Basis of jurisdiction.

The essential requisite to give the Magistrate jurisdiction under S. 145 is that he should be

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satisfied that a dispute exists regarding land or water before he makes the preliminary order. Once he is satisfied, his subsequent action relates to procedure and not jurisdiction and in this aspect is not liable to be upset on revision by the High Court. (Ram Lall, J.) Gurditta v. Taja.

AIR 1939 Lah 108 : 40 Cr LJ 519.

——No grounds for being satisfied —Order under Sub-Section is bad—Whole proceedings held were vitiated. (Mackney, J.) A Meah v. Steel Brothers & Co. Ltd.

AIR 1938 Rang 229 : 39 Cr LJ 708.

——Ss. 145, 537—Magistrate, if can take action merely on sworn testimony of complainant.

Per King, C. J. and Srivastava, J.— There is nothing in the language of S. 145, Criminal P. C., to suggest that the Magistrate cannot take action merely on the sworn testimony of the complainant himself, if the Magistrate believes it to be true. If a Magistrate believes the statement of one witness to be true, he is at perfect liberty to act upon it for the purpose of passing an order under S. 145 (1). It is not incumbent upon him to hold a preliminary inquiry himself by examining further witnesses, nor is it necessary for him to call for a report from the Police. If the Magistrate is satisfied on the strength of the testimony of one witness, then he can pass an order under S. 145 (1).

When the magistrate is so satisfied, omission to say so in his order is a mere irregularity and so long as there is no failure of justice or prejudice to the accused, the omission is covered by S. 537.

Per King, J.—But magistrates are not to understand that defects in procedure are of no importance. Slipshod procedure is to be condemned even though it does not result in vitiating the whole proceedings.

Per Nanavutty, J.—Before passing an order under S. 145 (1), the Magistrate should call upon the complainant to produce evidence on his behalf to prove that there really was dispute between him and the opposite parties concerning the plots he mentioned in his complaint, and that that dispute was of such a nature as was likely to cause a breach of the peace. And this preliminary inquiry is necessary to enable the Magistrate to satisfy himself that such a dispute did exist and that it was, in all probability, likely to cause a breach of the peace.

The omission of the Magistrate to satisfy himself of the existence of a dispute concerning land which, in his opinion, was likely to cause a breach of the peace is an omission which goes to the root of the matter as there is an initial want of jurisdiction on the part of the Magistrate to initiate proceedings under S. 145 of the Code, and such an infringement of the Code does not come within the purview of S. 537, for it vitiates at the very outset, the entire proceedings of the Magistrate.

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(King, C. J. on difference of opinion between Srivastava and Nanavutty, JJ.) Asgari Khanam Bibi v. Emperor.

AIR 1935 Oudh 316 : 1935 OWN (CC) 454 : 7 RO 554 : 11 Luck 157 : 155 IC 169 : 36 Cr LJ 656.

——Proceedings—When can be started.

No proceedings under S. 145, Criminal P. C., can be started unless the Magistrate is satisfied that there is fear of a breach of the peace between the parties. Hence where a Magistrate dismisses a complaint under S. 145 upon a perusal of the report made by the station officer of the Police that no likelihood of breach of the peace exists, his order cannot be set aside in revision. (Nanavutty, J.) Ram Manorath Das v. Kaushall Kishore.

AIR 1933 Oudh 253 : 10 OWN (CC) 310 : 6 RO 41 (1) : 145 IC 299 (2) : 34 Cr LJ 934 (1).

——Whether proceedings should be taken or not is matter within Magistrate's own discretion.

The District Magistrate has no authority in law to direct a subordinate to institute proceedings under S. 145. Whether such proceedings should or should not be taken is entirely a matter within the Magistrate's own discretion. Where the terms in which the District Magistrate's order is expressed, clearly indicate that the order was intended to leave the Magistrate free to exercise his own discretion in the matter, and he had ample materials before him on which S. 145 proceedings in respect of the whole land in question might be properly based, it cannot be said that the Magistrate failed to exercise his discretion vested in him by law, when he passed an order requiring certain additional land to be included in the proceedings. AIR 1929 Cal 751 and 24 Cal. 391, Ref. (Pearson and Patterson, JJ.) Nirpendra Chandra v. Sasadhar Saha.

AIR 1929 Cal 805 : 125 IC 750 : 1929 Cr C 574 : 50 CLJ 287 : 34 CWN 82 : 31 Cr LJ 923.

——Where a District Magistrate setting aside the proceedings of a Sub-Divisional Magistrate under S. 144 (4), directed him to draw up proceedings under S. 145 and he so drew them up.

Held, that he was not acting without jurisdiction where he had sufficient material whereon to base his order under S. 145. 24 Cal. 391, Dist. (Suhrawardy and Graham, JJ.) Kedarnath Sikdar v. Bijoy Mandal.

AIR 1929 Cal 751 : 33 CWN 723 : 1929 Cr C 335 : 123 IC 647 : 31 Cr LJ 544.

——The existence of dispute likely to cause breach of peace is absolutely necessary to give the Magistrate jurisdiction.

The powers conferred upon criminal courts by S. 145 are somewhat of an exceptional character because they enable the Magistrate mentioned in the section to partially deal with a matter over which civil courts have jurisdiction. Therefore the requirements of the section should be strictly

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followed. A Magistrate would have no jurisdiction unless he was satisfied that there existed a disupte concerning land, etc., and which dispute is likely to induce a breach of the peace. A formal order to this effect under Sub-S. (1) is absolutely necessary to give the Magistrate jurisdiction. AIR 1924 Lah 91, Foll. (Abdul Raoof, J.) Dhani Ram v. Kali Ram.

AIR 1927 Lah 805 : 26 PLR 712 : 105 IC 685 : 28 Cr LJ 973.

——Magistrate should not automatically proceed upon police report. He himself must be satisfied about existence of dispute likely to cause breach of the peace. (Kincaid, A. J. C.) Emperor v. Ganikhan.

AIR 1928 Nag 81 : 28 Cr LJ 929.

——Section 145 requires that a Magistrate, before passing an order, should be satisfied that a dispute likely to cause a breach of the peace exists. The section does not require a Magistrate to record evidence on that question sufficient to satisfy a superior Court. Where such an order is not plainly and palpably wrong, the mere absence of any evidence as to the breach of the peace, on the record is not sufficient reason for interfering in revision. (Stuart, C. J.) Ram Prasad v. Ram Adhar.

AIR 1927 Oudh 359 : 104 IC 463 : 4 OWN 834 : 28 Cr LJ 847.

——Magistrate should carefully scrutinize the evidence in cases under S. 145 and discourage private individuals from misusing the law.

There is far too great a tendency amongst private individuals to file applications under S. 145 simply as a first move which they imagine may put them in an advantageous position in the subsequent civil litigation as against the party with whom they are at logger-heads. This misuse of these provisions of law requires to be discouraged, and therefore though the Magistrate can rely on the police report, ordinarily it would be well for Magistrates to carefully scrutinize the evidence in this connexion in this class of cases. 33 Cal. 352, Rel. on. (Findlay, O. J. C.) Nago v. Atmaram.

AIR 1926 Nag 371 : 91 IC 244 : 27 Cr LJ 68.

——Foundation of jurisdiction — Written statement not filed—Effect of claim to joint possession.

In order to give jurisdiction to a Magistrate to proceed under S. 145 all that is necessary is that he should be satisfied of there being likelihood of a breach of the peace and he should make a note stating his grounds of his so being satisfied and require the parties to attend and to put in written statements of their claims. If a party fails to put in written statement that would not take away the jurisdiction of the Magistrate to proceed with the case; 11 W. R. Cr. Rulings, p. 9, Ref. (Kulwant Sahay, J.) Ramjharia v. Piar

CRIMINAL P. C. (V of 1898), S. 145 — 26. "Is satisfied"

Koeri.

AIR 1923 Pat 369 : 4 Pat LT 308 : 73 IC 173 : 2 Pat LR Cr 6 : 24 Cr LJ 557.

——The essential requisite to give a Magistrate jurisdiction under S. 145, Cr. P. C., is that he must be satisfied of the existence of a dispute. Once he is so satisfied, his jurisdiction is complete and his subsequent action must be considered in relation to procedure and not jurisdiction. (Martineau, J.) Jhanda Ram v. Topan Ram.

AIR 1922 Lah 454 : 4 UPLR (Lah) 82 : 67 IC 584 : 23 Cr LJ 424.

——Mere omission by a magistrate to state that he was satisfied from the police report that there was likelihood of a breach of the peace is not a fatal defect. (Gokul Prasad, J.) Mt. Har Piari v. Nathi Lal.

AIR 1920 All 227 : 18 ALJ 1140 : 22 Cr LJ 97.

——Omission to pass preliminary order.

The mere omission by Magistrate to record a preliminary order as per Cl. (1) of S. 145 is not a fatal defect unless prejudice has been caused thereby. In order to give jurisdiction to a Magistrate under the section it is essential that he should be satisfied that a dispute likely to cause a breach of the peace exists and such dispute must refer to land or water or the boundaries thereof lying within his jurisdiction. 33 C. 352, Ref.; 23 I.C. 487, Foll. (Shadi Lal, J.) Sajad Hussain v. Nanak Chand.

AIR 1917 Lah 35 : 22 PWR Cr 1917 : 39 IC 301 : 18 Cr LJ 461.

——Jurisdiction.

The Magistrate's satisfaction about the existence of a dispute likely to cause breach of peace in relation to land or water, etc., within his jurisdiction is the chief requisite for the exercise of his jurisdiction under S. 145. (Kendall and Muhammad Ali, A. J. Cs.) Udai Bhan v. Ram Samajh.

AIR 1917 Oudh 400 : 19 OC 139 : 18 Cr LJ 100.

——S. 145 (1) — Jurisdiction— Breach of peace— Order.

A Magistrate before taking action under S. 145 must find that he is satisfied that a dispute likely to cause a breach of the peace within his jurisdiction exists. In the absence of a statement to that effect in his order he has no jurisdiction to act under S. 145. (Ryves, J.) Danprashad v. Ganesh Pandey.

11 ALJ 696 : 20 IC 751 : 14 Cr LJ 495.

——S. 145 (4)— Foundation of jurisdiction— Presumption—Jurisdiction—Possession.

The jurisdiction of a Magistrate to initiate proceedings under S. 145 is not determined by the date of dispossession of one of the parties claiming the land, but by an apprehension based on reliable information, that a dispute likely to cause a breach of the peace exists between two parties concerning some land situate within the local limits of the jurisdiction of the Magistrate. A

CRIMINAL P. C. (V of 1898), S. 145 — 26. "Is satisfied"

Magistrate can decide the question of actual possession on grounds other than the presumption referred to in S. 145 (4). (Rafique, J.) Sheoraj Singh v. Emperor.

11 ALJ 305 : 19 IC 319 : 14 Cr LJ 223.

——Basis for jurisdiction.

——Once the magistrate is satisfied from information of some sort that a dispute exists which is likely to cause a breach of the peace concerning land or water or the boundaries thereof, within his jurisdiction, his jurisdiction is complete and his subsequent action must be considered in relation to procedure and not jurisdiction. (Ayling and Napier, JJ.) Kamal Kutey v. Udayavarma Raja.

36 Mad 275 : 17 IC 65 : 12 Mad LT 439 : 23 Mad LJ 499 : 13 Cr LJ 753.

——Grounds for satisfaction, whether justiciable.

High Court should not ordinarily examine whether the grounds upon which the magistrate was satisfied as to the likelihood of breach of the peace, afford a reasonable ground for his conclusions. 20 Cal 513 Dissented from. (Rampini and Mookerjee, JJ.) Kulada Kinkar Roy v. Danesh Mir.

33 C 33 : 10 CWN 257 : 2 CLJ 271 : 2 Cr LJ 670 (FB).

——"Then" in Sub-S. (4).

The word "then" in Sub-S. (4) applies only to the time of order of the magistrate's proceedings and was not intended to deprive him of jurisdiction, if notice under Sub-S. (3) had not been duly published. Jurisdiction of the court arises as soon as Sub-S. (1) is complied with. 2 Cr LJ 569; 8 Cal. W. N. 590, Overruled. (Francis W. Maclean, C. J., Ghose, Rampini, Pratt and Henderson, JJ.) Sukh Lal Sheikh v. Tarachand Ta.

33 C 68 : 9 CWN 1046 : 2 CLJ 241 : 2 Cr LJ 618 (FB).

27. Issue of summons to witnesses—Sub-Section (9).

See also Note 48—"Receive all such evidence as may be produced".

——In view of the provisions of Sub-S. (9) it is discretionary with the magistrate to summon or not to summon witnesses in a proceeding under S. 145. (Bind Basni Prasad, J.)' Mrs. V. E. Argles v. Chhail Behari.

AIR 1949 All 230 : 50 Cr LJ 345.

——Passing of order after inquiry into possession, when necessary, stated.

Once a Magistrate has found in proceedings under S. 145, Criminal P. C., that there is an apprehension of a breach of the peace, it is his duty to inquire into the possession of the parties and to pass orders accordingly either under S. 145, or under S. 146. It becomes unnecessary for him to pass such an order with regard to possession only on his being satisfied either that there is no longer any apprehension of a breach of the peace or that no dispute between the parties exists or has existed. The mere fact that one of the parties was absent on the date fixed does not entitle a Magistrate to dismiss proceedings under S. 145 when there has been a definite finding that there is an apprehension of a breach of the peace. (Bennett, J.) Raquma v. Ghirrai.

CRIMINAL P. C. (V of 1898), S. 145 — 27. Issue of summons to witnesses—Sub-s. (9)

AIR 1940 Oudh 22 : 1939 AWR (CC) 277 : 12 RO 142 : 1939 OWN (CC) 974 : 184 IC 751 : 41 Cr LJ 96 (2).

——Magistrate examining certain number of witnesses on each side in proceedings under S. 145, but ignoring evidence and attaching land under S. 146—High Court setting aside order and directing to consider evidence as whole — Magistrate being transferred, case transferred to another Magistrate—One party producing before such Magistrate long list of witnesses— Magistrate, whether bound to summon all— Magistrate summoning only those witnesses examined before—Legality.

Where in proceedings under S. 145, Criminal P. C., a Magistrate examines a certain number of witnesses on both the sides but ignoring the evidence, attaches the land in dispute under S. 146, relying exclusively upon the evidence of the Superintendent of Police and the High Court sets aside that order and directs the Magistrate to pronounce judgment after considering the evidence as a whole but the Magistrate being transferred, the case is transferred to another Magistrate and a party comes forward before such Magistrate with a long list of witnesses, the Magistrate has power to issue process on these witnesses under Sub-S. 9 of S. 145; but it cannot be said that any obligation lies upon him to summon any witnesses other than those originally produced by the parties in the proceeding, and if he summons only those witnesses who were examined previously, there is no irregularity or illegality. (James, J.) Bhupal v. Abdul Hakim.

AIR 1939 Pat 281 : 5 BR 319 : 11 RP 423 : 179 IC 896 : 40 Cr LJ 276.

——Duty of Magistrate to take evidence for forming opinion.

Under S. 145, Criminal P. C., the Magistrate's duty is to decide whether there is likely to be a breach of the peace and whether one party, although recently dispossessed, is to be regarded as in possession. To do this he must take such evidence as he finds necessary and it rests with him and not with the parties to decide what evidence is necessary to be called. The recent amendment to Cl. 4 which requires the Magistrate to receive all such evidence as may be produced by the parties and to consider the effcet of such evidence does not mean anything more than that he must receive evidence actually put before him by the parties but does not require him to sum-

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mon witnesses at the instance of the parties who are unable to bring these witnesses to Court. In S. 145, there is no such provision as is to be found in Cl. 2 of S. 252. (Mackney, J.) A. Meah v. Steel Brother & Co. Ltd.

AIR 1938 Rang 229 : 11 R Rang 40 : 176 IC 266 : 39 Cr LJ 708.

(Note : See however Sub-S. (9) which was added at the same time when Sub-S. 4 was amended i.e., in 1923—Ed.)

——Ss. 145 (9), 439— Proceedings under S. 145—Issuing of summons to witnesses — Discretion of Court — Revision — High Court, when will interfere.

Section 145, Sub-S. (9), Criminal P. C., leaves it entirely to the discretion of the Magistrate whether he will or will not summon any witnesses. The duty of the Court in the matter of summoning witnesses is set forth differently according as the matter before the Court is an enquiry into a case triable by a Court of Session or a summons case or a warrant case, and the duty varies as between the prosecution and the accused. There is no justification for the supposition that in every case, it is the duty of the Court to issue process to summon any witnesses whom either party wishes to summon. In petty cases, it is entirely a matter for the discretion of the Magistrate whether he will summon witnesses or not. Where no serious and substantial injury has been caused, High Court will not interfere in revision. (Allsop, J.) Kunj Behari Das v. Emperor.

AIR 1936 All 322 : 58 All 920 : (1936) ALJ 370 : 8 RA 892 : 1936 AWR (HC) 439 : 162 IC 736 : 37 Cr LJ 694.

——The magistrate cannot restrict the number of witnesses for examination. (Wallace, J.) Vasireddi Lingayya v. Adusumallu Nagayya.

1932 MWN 320.

——The direction to receive evidence implies a duty on the Court to summon such witnesses as may be mentioned to the Court by either party. 32 Cal 1093, Dist. (Dalal, J.) Chakrapan v. Emperor.

AIR 1930 All 319 : 1930 Cr C 432 : 1930 ALJ 484 : 52 All 91 : 125 IC 463 : 31 Cr LJ 839.

——Proceedings under S. 145 take place on behalf of the Crown on a report made to the Magistrate. The proceedings are against all other parties concerned and processes should issue at Government expense. The parties originally mentioned and any others who may come in later should be ranged on one side as the first party, the second party and so forth. (Hallifax, A. J. C.) Emperor v. Mt. Fhutanja.

AIR 1925 Nag 142 : 81 IC 933 : 25 Cr LJ 1109.

——Examination of witnesses.

In proceedings under S. 145 it is in the discretion of the Magistrate to refuse to examine all the witnesses produced by any party, but the discretion is one which must be exercised with due care and caution and with careful regard to the circumstances of each particular case. (Kulwant Sahay, J.) Mt. Wahid-unnissa v. Pichit Lal Misir.

AIR 1924 Pat 534 : 75 IC 538 : 24 Cr LJ 954.

——S. 145 (4)— Refusal to issue summons— If vitiates proceedings.

It is not obligatory on a magistrate to assist the parties to a proceeding under S. 145, Cr. P. Code to produce their witnesses and they cannot claim as a matter of right that process should be issued by the Court. 32 Cal. 1096 ; 38 Cal. 24 foll.

The refusal to issue such summons does not mean a denial of a fair trial. (Ross, J.) Arjun Mahton v. Juggarnath Singh.

AIR 1922 Pat 226 : 3 PLT 433 : 66 IC 419 : 23 Cr LJ 275.

——Ss. 145, 244 and 439—Party's right to produce witnesses.

The procedure in a case under S. 145 is that prescribed for the trial of summons cases and the Court can curtail the number of witnesses on the ground that their examination is unnecessary and will defeat or delay the ends of justice. Subject to this the parties can examine their witnesses and their right cannot be curtailed by the Magistrate. (Jwala Prasad, J.) Biswanath Mahapatra v. Shivanand Sarswathi.

AIR 1921 Pat 308 : 2 PLT 330 : 61 IC 718 : 22 Cr LJ 430.

(But under new Sub-S. (9) the Magistrate is bound to receive all such evidence as may be produced.—Ed.)

——Duty of Magistrate —Enquiry —Summons to witnesses.

It is in the discretion of a Magistrate in an inquiry under S. 145 to allow witnesses to be resummoned upon an application towards the end of the inquiry. (Spencer, J.) Bulkis Bivi v. Nagoor Kanni Rowther.

AIR 1915 Mad 1105 : 17 MLT 225 : (1915) MWN 267 : 28 IC 332 : 16 Cr LJ 284.

——Duties of Magistrate — Application for summons against a Sub-Inspector rejected—No opportunity given to examine him — Final order — Legality.

In a case under S. 145 where an application was made by the petitioner for issue of summons against a Sub-Inspector of Police, the Magistrate rejected the same as vexatious, and proceeded to pass the final order under S. 145, both the orders were bad, the latter on the ground that it was made without jurisdiction as the petitioner was not given an opportunity of examining the Sub-Inspector of Police and that the judgment contains no finding of the fact of actual possession. (Imam and Chapman, JJ.) Gaizuddi Howladar v. Amuddi Howladar.

AIR 1914 Cal 753 : 18 CWN 94 : 22 IC 431 : 15 Cr LJ 79.

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——The Court is not bound to exhaust the processes of the Court to enforce the attendance of witnesses that did not appear. (Carnduff and Imam, JJ.) Hari Pada v. Sanyasi Charan Biswas.

17 CWN 144 : 18 IC 264 : 14 Cr LJ 40.

——Summoning of witnesses at the instance of parties.

The section neither contemplates the summoning of witnesses at the instance of the parties nor renders it obligatory on the magistrate to compel attendance of any witnesses unless he in his discretion thinks it necessary to take the evidence of those witnesses. (Harington and Teunon JJ.) Harendra Kumar Bose v. Girish Chandra Mitra.

7 Ind Cas 798 : 38 C 24 : 11 Cr LJ 530.

(Case before 1923 Amendment.—Ed.)

——S. 145 (4)—Examination of witnesses—Discretion of magistrate.

While acting under S. 145, Cr. P. C., the Magistrate has a discretion in the matter of examining the witnesses. He is not bound to examine all the witnesses adduced by the parties. He can limit the number for good and sufficient reason.

The discretion of the magistrate has to be exercised with due care and caution and with a careful regard to the circumstances of each case. ILR (1904) 31 Cal 685 Expl. (Brett and Stephen, JJ.) Samir Sheikh v. Jahed Sheikh.

3 CLJ 478 : 3 Cr LJ 423.

——Ss. 145, 244 (2)— Applicability of procedure prescribed for summons cases — Summons for attendance of witnesses.

The procedure laid down for summons cases is not made applicable to proceedings under S. 145. The parties cannot claim it as a matter of right that the Magistrate should assist them to produce their evidence by issuing summons or other processes to their witnesses. (Rampini and Mookerjee, JJ.) Tarapada Biswas v. Nurul Huq.

32 C 1093 : 2 CLJ 280 : 2 Cr LJ 679.

28. Joint possession.

(a) Both parties in joint possession.
(b) Claim to exclusive possession.
(c) Claim to possession of portion.

28. Joint possession.

(a) Both parties in joint possession.

——Ss. 145 and 146—Joint possession.

When the disputed property is in joint possession of both parties, it is open to the High Court to cancel the order passed by the trial Court relegating the parties to the same position in which they were prior to the commencement of the proceeding under S. 145, Cr. P. C. But the disputed property may be attached under S. 146, Cr. P. C. (Narsimham, J.) Mallik Rafiq v. Mallik Abdul Hakim.

AIR 1953 Orissa 278 : ILR (1952) Cut 626 : 1953 Cr LJ 1596.

CRIMINAL P. C. (V of 1898), S. 145—28. Joint possession—(a) Both parties in joint possession

——Ss. 145, 107 — Procedure where parties are found in joint possession of property and breach of peace is also apprehended.

Where the Magistrate finds that the property was in the joint actual possession of the parties but at the same time he apprehends a breach of the peace between the parties on account of this he must start separate proceedings under Ss. 145 and 107. If they are separate, the Magistrate can drop the proceeding under S. 145 and pass such order as he thinks fit in the proceeding under S. 107. If, however, the Magistrate has taken the irregular course of having mixed up proceedings under Ss. 145 and 107 he can drop those proceedings and by a separate order commence proceedings under S. 107. Where, however, proceedings have been taken exclusively under S. 145 the Magistrate cannot pass an order under S. 107 in those very proceedings and they must be dropped. (Wanchoo C. J. and Bapna, J.) Nahar Singh v. State.

AIR 1951 Raj 156 : ILR (1951) 1 Raj 265 : 52 Cr LJ 1209.

——Ss. 145 (6), 146—Parties found in actual joint possession—Nature of order to be passed.

Where a Magistrate finds after enquiry that the parties were in joint actual possession of the property in dispute, he should drop the proceedings started under S. 145. And further in such a case, the Magistrate cannot proceed to pass an order under S. 146. (Wanchoo C. J. and Bapna, J.) Nahar Singh v. State.

AIR 1951 Raj 156 : ILR (1951) 1 Raj 265 : 52 Cr LJ 1209.

——Dispute between two parties—Members of one party having same source and nature of possession—General finding regarding joint possession by members of that party is not irregular. (Govinda Menon, J.) Munia Servai v. Thangaraya Onturiyar.

AIR 1949 Mad 226 : 1948 MWN 573 : 1948-2 MLJ 209 : 50 Cr LJ 253.

——Ss. 145 and 146— Both parties in joint possession—Applicability of Ss. 145 and 146.

Section 145 applies only in cases where the dispute is about actual possession and not about joint possession. Section 146 also deals with actual exclusive possession and when S. 145 cannot be applied to cases of joint possession, S. 146 also cannot be applied to such cases. A Magistrate, therefore, has no power to order an attachment under S. 146, when he finds that both the parties are in joint possession : AIR 1921 Oudh 6; AIR 1941 Oudh 515 and AIR 1915 Mad. 396, Rel. on. (Chandiramani. J.) Gopinath Singh v. Emperor.

AIR 1948 Oudh 130 : 1947 OACC 353 : 1947 AWR CC 353 : 1947 OWNCC 564 : 49 Cr LJ 202.

——Undivided share in land or produce.

Section 145 is not ordinarily intended to apply to disputes as regards undivided shares in land

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or in the produce of land, because Sub-Ss. (4) and (6) of S. 145 contemplate that one of the parties shall be or shall not be put in possession of the subject-matter of the dispute. (Davis, C. J. and Weston, J.) Jam Bhambho Khan v. Makhdum Mohammad Hassan Shah.

AIR 1942 Sind 117 : ILR (1942) Kar 120 : 15 RS 55 : 202 IC 617 : 43 Cr LJ 876.

——Applicant stating that he purchased one-third share in land which was undivided and that he was in possession of his one-third undivided share —Application should be rejected.

A statement by the applicant under S. 145 at one place in his application that the land was undivided, and he purchased an undivided share, and in another place that he was in separate possession of his one-third undivided share is a contradiction in terms and, therefore, the application should be rejected at the outset. (Davis, C. J. and Weston, J.) Jam Bhambho Khan v. Makhdum Muhammad Hassan Shah.

AIR 1942 Sind 117 : ILR (1942) Kar 120 : 15 RS 55 : 202 IC 617 : 43 Cr LJ 876.

——Possession contemplated in actual and exclusive possession and not joint. (Ghulam Hasan, J.) Mahmood Beg v. Ehsan Beg.

AIR 1941 Oudh 575 : 42 Cr LJ 710.

——Person claiming to be in possession of entire village—He cannot be declared to be entitled to possession of undivided share only.

Where a person claims to be in possession of the entire village, it is not permissible under S. 145, Criminal P. C., for a Magistrate to declare him to be entitled to possession of an undivided share of the village. (Lakshmana Rao, J.) Muthuswami Thevar v. Rajakumar B. Rajaram Pandian.

AIR 1940 Mad 904 : 13 RM 542 : 1940 MWN 801 : (1940) 2 MLJ 355 : 52 MLW 346 (1) : 191 IC 53 : 42 Cr LJ 67.

——Where the opposite party alleged that they were in the joint possession of the property in dispute with the applicants and were members of joint Hindu family the Magistrate had no jurisdiction to initiate proceedings under S. 145, Criminal P. C. (Nanavutty, J.) Shanti Prasad v. Emperor.

(1937) 1937 OWN (C C) 214.

——Object is to avoid breach of peace—Joint possession is contrary to its object.

The actual purport of S. 145 is to declare possession with the sole object of avoiding breach of peace. But when both parties are in joint possession, to declare them so to be in possession is contrary with the object of S. 145, Criminal P. C., as such an order would in no way be conducive to public tranquillity. The proper procedure in such a case would be to take action under S. 107, Criminal P. C., against the party intending to oust

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the other's possession. (Grille, J. C.) Laxmanappa v. Ganu Singh.

AIR 1935 Nag 44 : 17 NLJ 216 : 1935 Cr Cas 254.

——Section 145 applies only to disputes about actual physical possession and not to disputes about joint possession. (Addison, J.) Wali Muhammad v. Rahmat Ali.

AIR 1928 Lah 818 : 110 IC 807 : 11 AI Cr 44 : 29 Cr LJ 775.

——Ss. 145 and 146—Joint possession—Order under the sections incompetent.

Where the Magistrate finds that the property is joint and presumably in the joint possession of both the parties, he cannot make an order under section 145 or under section 146. (Bucknill, J.) Nand Kishore v. Kalika Missar.

AIR 1923 P 546 : 75 IC 69 : 24 Cr LJ 869.

——Ss. 145 and 144—Joint possession—Jurisdiction.

Where there is a good and valid claim to joint possession the Magistrate has no jurisdiction to take proceedings under S. 145. (Adami, J.) Rampabitar Singh v. Kasim Ali Khan.

AIR 1922 P 423 : 67 IC 203 : 23 Cr LJ 379.

——S. 145 of the Code contemplates a case where one party is in actual possession and the other not and therefore it does not apply to a case of two co-owners. (Wazir Hasan, A. J. C.) Arjun Singh v. Chandan Khan.

AIR 1921 Oudh 6 : 24 OC 167 : 63 IC 321 : 22 Cr LJ 625.

——Ss. 145 and 146—Applicability—Dispute about shares.

Ss. 145 and 143 of the Code do not apply to a case where the properties are jointly held by the parties and the dispute is only about their shares. (Beachcroft and Ghose, JJ.) Ram Bitsur Maghi v. Joy Ram Maghi.

AIR 1920 Cal 894 (1) : 61 IC 174 : 22 Cr LJ 350.

——Proceedings under.

In proceedings under S. 145 of the Cr. P. Code, the dispute must be between parties each of whom claims exclusive possession of the property in dispute. Where the dispute is between parties, one of whom claims joint possession of the disputed property, proceedings under S. 145 cannot be drawn up. 4 CWN 426; (1919) Pat 479, Foll. (Adami, J.) Sham Lal Mahton v. Rajendra Lal.

AIR 1920 Pat 513 : 1 Pat LT 594 : 58 IC 518 : 21 Cr LJ 790.

(Overruled in AIR 1932 Pat 366 : 34 Cr LJ 115.)

——Right to—Effect of.

S. 145, Cr. P. Code, has no application where the contesting parties are entitled to joint possession. (Sadasiva Iyer and Burn, JJ.) Gopala Iyer v. Krishnaswamy Iyer.

AIR 1920 Mad 209 : 27 MLT 234 : 11 LW 459 : 54 IC 473 : 21 Cr LJ 73.

——Recognition of—Actual possession to be found.

Ss. 145 and 146 of the Cr. P. Code authorise no recognition of joint possession and no order can

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be passed forbidding one of the parties to interfere with the joint enjoyment by both. 32 IC 669 : 9 CWN 485 : 11 CWN 512, Ref. Under S. 145 the Court must record a finding as to which party was in possession at the date of its preliminary order. (Oldfield, J.) Sankara Kylasa Mudaliar v. Kuthaiinga Mudaliar.

AIR 1919 Mad 812 : 47 IC 877 : 19 Cr LJ 977.

——Power of Magistrate.

Where a Magistrate before commencing proceedings under S. 145 orders the crops on land to be deposited with a third person and after enquiry found that the parties had been in joint possession and that there was no likelihood of a breach of the peace and ordered the crop to be taken by the parties in equal moiety. Held, that the Magistrate had jurisdiction to pass such an order and that the High Court will not interfere. (Chapman, J.) Ishan Chandra v. Srinath.

AIR 1917 Pat 660 : 1 Pat LW 543 : 39 IC 984 : 18 Cr LJ 616.

——Joint possession of property in dispute—Jurisdiction of Magistrate.

Where both parties to a dispute relating to immovable property are found to be in joint possession thereof, a Magistrate has no jurisdiction to issue an order under S. 145 forbidding either the one party or the other from disturbing the possession of the other till evicted in due course of law. 4 CWN 426; 23 IC 644. Foll. (Srinivasa Aiyangar, J.) Veerabhadra Pillai v. Shunmugam Pillai.

AIR 1917 Mad 509 : 32 IC 668 : 17 Cr LJ 76.

——Where the Magistrate finds that both parties are jointly entitled to land, he cannot hold that one of them is in possession to the exclusion of the other and so maintain that one party's possession. (Ryves, J.) Danprashad v. Ganesh Pandey.

11 ALJ 696 : 20 IC 751 : 14 Cr LJ 495.

——Joint title and possession—Magistrate's jurisdiction.

A Magistrate can under S. 145 try a question of actual possession only and not one of joint title or of actual joint possession. (Harrington and Coxe, JJ.) Basant Kumari Dasi v. Mohesh Chandra Laha.

40 Cal 982 : 17 CWN 944 : 19 IC 541 : 14 Cr LJ 269.

——S. 145 (6) — Public if may be declared to be in possession.

The public cannot be declared to be in possession of any piece of land as in that case both parties are included and possession is joint and hence Court's jurisdiction is ousted. (Holmwood and Imam, JJ.) Manik Chandra Chakravarti v. Preo Nath Kuar.

17 CWN 205 : 17 CLJ 397 : 17 IC 533 : 13 Cr LJ 789.

——Jurisdiction — Dispute as to joint possession.

Where the parties must be held to have joint right in a fishery and neither of them can be considered as claiming exclusive possession the section is inapplicable to a dispute arising between them in respect of the possession of a share of the fishery. But if the dispute had been in respect of a share of the profits of the fishery it may be possible to deal with it by reason of sub-s. (2) of the section. (Stephen and Carnduff JJ.) Bhabanath Chakravarti v. Peary Sarma.

11 CLJ 412 : 6 Ind Cas 544 : 11 Cr LJ 370.

——Joint wall.

The section does not apply to a case of admittedly joint possession because it contemplates a dispute between two parties each of which claims to hold possession as against the other unless the dispute is likely to lead to the breach of the peace.

The section having nothing to do with title the other party's allegation that the property was his exclusive one, cannot be considered. (Rendall, J.) Virpa Ambaram Gopalji v. Desai Sadashankar Manishankar.

16 KLR 212 : 4 Cr LJ 330.

——In a suit for partition certain properties were declared to be joint properties of the two parties concerned and partition was ordered to be effected:

Held that no order under S. 145, Criminal P. C., could be made until the jointness of the properties is disturbed by actual partition in pursuance of the Civil Court's order. (Ghose and Stephen, JJ.) Dharani Kanta Lahiry Chowdhury v. Girija Kanta Lahiry Chowdhury.

8 CWN 485 : 1 Cr LJ 367.

28. Joint possession —(b) Claim to exclusive possession.

——Where one set of persons claims exclusive possession of some lands whereas another set of persons claims to be in joint possession along with them, a proceeding under S. 145, Cr. P. C., would lie. (Narsimham, J.) Mallik Rafiq v. Mallik Abdul Hakim.

AIR 1953 Orissa 278 : ILR (1952) Cut 626 : 1953 Cr LJ 1596.

——Parties in joint possession— Legality of proceedings.

If the parties are in joint possession, the proceedings under S. 145 cannot be taken. But where the parties are disputing their individual claims to the property as reversioners and are not in joint possession, the proceedings under the section are not uncalled for. (Bennett, J.) Bis Ram v. Kamta Prasad.

AIR 1945 Oudh 62 : 1944 OA (CC) 295 : 1944 AWRCC 295 : 1944 OWN (CC) 479.

——For relief under S. 145, the property in dispute must vest in party exclusively as against other party— S. 145 has no application to the case of joint possession. (Shukla, J.) United State of Saurashtra v. Shah Mavji Pragji.

2 Sau LR 125.

CRIMINAL P. C. (V of 1898), S. 145—28. Joint possession—(b) Claim to exclusive possession

——One party claiming to have and actually found to be in exclusive possession adverse to other party—Other party setting up title to joint possession—S. 145, if rendered inapplicable.

It is true that when it has been found that the contesting parties are actually in joint possession, no order should be made under S. 145. The position is different where one of the parties claims to have and is actually found to have exclusive possession adverse to the other party. The mere fact that the other party sets up a title to joint possession does not then render S. 145 inapplicable. (Gruer, J.) Sheo Prasad Shivram v. Govind Ram Hardit Prasad.

AIR 1940 Nag 265 : 13 RN 78 : 1940 NLJ 375 : 189 IC 774 : 41 Cr LJ 799.

——One party claiming exclusive possession and other joint possession with them — Proceedings under S. 145, if appropriate.

Proceeding under S. 145, Criminal P. C., can be started in a case in which one party claims exclusive possession while another party claims to be in joint possession along with them as the question in such case is no less a question of disputed actual possession than if each party claimed exclusive possession of the entire area. (Rowland, J.) Zafar Ahsan v. Jugeshwar Bux Roy.

AIR 1940 PAT 135 : 6 BR 155 : 12 RP 369 : 185 IC 346 : 41 Cr LJ 171.

——Co-sharer in exclusive possession of defined area—Other claiming joint right— S. 145 applies but not where possession is joint.

If property is found to be actually in the joint possession of parties, S. 145 cannot apply but when one party, even if a co-sharer, is in exclusive possession of a defined area, and the other party claiming a joint right therein wants to disturb his possession, the provisions of the section would apply. (Grille, J. C.) Laxman Appa v. Ganu Singh.

AIR 1935 Nag 44 : 17 NLJ 216 : 1935 Cr Cas 254.

——Cases of joint possession, if covered by S. 145.

Section 145, Criminal P. C. contemplates a dispute between two parties, each of which asserts a right to hold actual possession of the property as against the other. Section 145 does not cover cases where one party claims to hold joint possession and the other party contests such right. In such cases, an order allowing one party to remain in possession till evicted by law is bad and is without jurisdiction. But even in cases covered by joint possession, where one party is, by some arrangement, actually in physical possession of a certain part of the property, the Magistrate would have jurisdiction to decide who was in actual possession of that part. Where there is actual physical possession of definable and demarcated property, action under S. 145, Criminal

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P. C., can be taken. (Grille, J. C.) Emperor v. Ramzam.

AIR 1934 Nag 196 : 7 RN 63 : 30 NLR 300 : 151 IC 728 : 35 Cr LJ 1384.

——Ss. 145, 146—Dispute as to joint possession of land—Jurisdiction of Magistrate to initiate proceedings. AIR 1920 Pat 513 : 21 Cr LJ 790 and AIR 1920 Pat 835 : 21 Cr LJ 224, overruled.

Section 145, Criminal P. C., is not inapplicable to a case of dispute relating to immoveable property merely because one set of persons claims exclusive possession over the major portion of it while the other set of persons claims to be in joint possession along with them of the entire land.

The only condition for a proceeding under S. 145 terminating in a finding under Sub-S. (4) and an order under Sub-S. (6) or an order under S. 146, is that the Magistrate should be satisfied on information before him that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within the local limits of his jurisdiction.

The jurisdiction of the Magistrate to initiate proceedings under S. 145 is subject only to the limitation provided in the section itself and it is altogether wrong to graft limitations upon the enactment which the Legislature has not placed there. AIR 1920 Pat 513 : 21 Cr LJ 790 and AIR 1920 Pat 835 : 21 Cr LJ 224, overruled. (Macpherson and James, JJ.) Nandkeshwar Prasad v. Sita Saran.

AIR 1932 Pat 366 : 13 PLT 609 : Ind Rul (1933) Pat 35 (2) : 12 Pat 87 : 140 IC 902 : 34 Cr LJ 115.

——Section cannot apply to disputes between persons having joint rights.

Seeing that S. 145 merely contains the words "a dispute likely to cause a breach of the peace concerning any land or water or the boundaries thereof, and seeing that neither in S. 145 nor in S. 146 is there any provision which clearly limits the dispute, which can be dealt with under Ch. 12 to a dispute by "two opposing parties having adverse rights to its exclusive possession it cannot be said that because the dispute was not one between two opposing parties having adverse rights to exclusive possession of the land but was a dispute between two parties having joint rights to the land in dispute each of which was claiming exclusive possession, S. 145 cannot apply. 11 CWN 512, Diss. from. (Mirza and Broomfield, JJ.) In re Venkatraman Rama Hedge v. Emperor.

AIR 1930 Bom 172 : 32 Bom LR 340 : 1930 Cr C 548 : 125 IC 718 : 31 Cr LJ 933.

——Two things essential for proceedings under S. 145 are dispute and possession.

In proceedings under S. 145 the first thing to be decided is whether there is a dispute likely to lead to a breach of peace and secondly which party of

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the disputants is in actual possession. Previously both parties were in joint possession. But after the dispute, the property was kept under attachment by order of Court till the parties established their exclusive right to it. Afterwards one of the parties produced the partition chitthi which allotted the disputed property to him, while the other offered no evidence as to possession. The Magistrate put the former in possession.

Held, that the order should not be set aside. (Pullan. J.) Balbhaddar Singh v. Aditya Prasad.

AIR 1929 Oudh 82 : 6 OWN 17 : 114 IC 810 : 30 Cr LJ 381.

——Power of Magistrate—Co-owners.

Merely because the parties are brothers and presumably members of a joint Hindu family the Court is not precluded from giving possession to one as against the other. If the Court finds from the evidence that one brother is already in possession and that if no order is passed continuing him in possession there is likely to be a breach of the peace, the Court is perfectly right in passing an order under S. 145 without any regard to the merits of the other brother's claim to have a share in the land. (Pullan, J.) Jeolal v. Chhanga Lal.

AIR 1927 Oudh 316 : 1 LC 201 : 9 AI Cr R 43 : 104 IC 717 : 28 Cr LJ 877.

——Where the joint owners of a lease of the right to collect rent of certain land are actually in separate possession of certain shares of the right but there is a dispute as to the possession of a certain other share of which each party claims exclusive possession, S. 145 is applicable. The criterion in such cases is whether the parties claim exclusive possession. 5 All 607, 23 Cal 30, 10 CWN 1088 and 36 Cal. 986, Dist. 27 Cal. 259, 17 MLT 225, 1 PLT 594 and AIR 1923 Pat. 369, Foll. (Macpherson, J.) Basudeo Singh v. Mahadeo Lal.

AIR 1925 Pat 618 : 88 IC 707 : 6 PLT 454 : 1926 PHCC 142 : 26 Cr LJ 1187.

——Where each party claims exclusive possession of half of the plot in dispute and not joint possession of the whole together proceedings under S. 145 are maintainable. 1 PLT 594, Dist. (Kulwant Sahay, J.) Ramjaria v. Piar Koeri.

AIR 1923 Pat 369 : 2 Pat LR Cr 6 : 4 PLT 308 : 73 IC 173 : 24 Cr LJ 557.

——Where according to the settlement papers, the land in dispute is a joint property in which the petitioners were co-sharers; but the Magistrate finds that one co-sharer was in sole possession of this land, held the Court had jurisdiction to make an order under S. 145. (Newbould and Suhrawardy, JJ.) Jayamangal Singh v. Kanta Gope.

AIR 1924 Cal 444 : 72 IC 32 : 24 Cr LJ 304.

——S. 145 applies to a case where the dispute is between co-sharers each claiming to be in possession of the disputed land to the exclusion of others, section is not rendered inapplicable to a case in which parties are jointly entitled to the land in question. (Broadway, J.) Malan v. Makhan Singh.

AIR 1922 Lah 348 : 2 Lah 375 : 23 Cr LJ 225.

——Burn, J.—The mere fact that both parties claim joint possession will not take away the jurisdiction of the Magistrate if in fact only one was in possession. (Sadasiva Iyer and Burn, JJ.) Gopala Iyer v. Krishnaswamy Iyer.

AIR 1920 Mad 209 : 27 MLT 234 : 11 LW 459 : 54 IC 473 : 21 Cr LJ 73.

——Order declaring one party in possession — Jurisdiction.

Where it was found that the second party was in possession of the disputed land on behalf of the first party as also on behalf of himself, both parties being members of the same family and the Magistrate declared the second party to be in possession of the disputed land. Held, the court had no power to pass the order. 4 CWN 426. Foll. (Walmsley and Huda, JJ.) Kinu Mandal v. Haji Baul Mondal.

23 Cal WN 1051.

——Application.

S. 145, Cr. P. C., applies though the land in dispute is held under joint title, if one of the joint owners is in actual and exclusive possession. (Chitty and Walmsley, JJ.) Baijnath Marwari v. W. S. Street.

AIR 1917 Cal 404 : 20 CWN 518 : 34 IC 971 : 17 Cr LJ 251.

——Exclusive possession by each set of landlords through tenants—One tenant setting up tenancy against another—Jurisdiction of Magistrate.

A Magistrate has jurisdiction to pass an order under S. 145, Cr. P. C., in favour of one tenant as against others setting up their tenancy where the case is one of exclusive possession claimed by each set of landlords through their respective tenants. (Caspersz and Sharfuddin, JJ.) Gurudas Kunda v. Kedar Nath Kundu.

38 Cal 889 : 15 CLJ 184 : 11 IC 592 : 12 Cr LJ 408.

——Ss. 145 and 107—Dispute between two parties having joint right.

A Magistrate has no jurisdiction under S. 145 Cr. P. C., to entertain a dispute between two parties having joint right to the lands in dispute, each claiming exclusive possession thereof. In such a case, if any steps are necessary for the prevention of a breach of the peace, the Magistrate should proceed under S. 107 against both the parties. (Brett and Gupta, JJ.) Makhan Lal Roy v. Baroda Kanta Roy.

11 CWN 512 : 5 Cr LJ 296.

——Co-shebaits.

The possession of one co-shebait who is entrusted with the sole management of the debutter property is that of an agent as regards the shebaiti rights of the other co-shebaits. Proceedings

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under S. 145 cannot be instituted in respect of a dispute between a shebait claiming sole claim to have joint management with him. Debutter property is impartible and inalienable. The possession of shebaits must always be necessarily joint and cannot be a subject of proceeding under S. 145. (Mitra and Holmwood, JJ.) Nritta Gopal Singh v. Chandi Charan Singh.

10 CWN 1088 : 4 Cr LJ 215.

——Ss. 107, 145—Question whether possession was joint or exclusive — Where two parties were quarrelling over a mango orchard, and one of them claimed to be in exclusive possession of the orchard, while the other claimed to be in joint possession, held, that the Magistrate ought not to have taken proceedings under S. 107, but should have proceeded under S. 145 as there was a dispute concerning land, which was likely to cause a breach of the peace. (Geidt and Mookerjee, JJ.) Emperor v. Debendra Nath Bose.

1 CLJ 632 : 2 Cr LJ 658.

——Partnership property — Claim to exclusive possession by partner.

The claim by a partner to exclusive possession of the partnership property, as manager, is a question outside the purview of S. 145. (Pratt and Handley, JJ.) Radha Raman Ghose v. Baliram.

32 Cal 249 : 8 Cal WN 885 : 1 Cr LJ 847.

28. Joint Possession—(c) Claim to possession of portion.

——Joint or exclusive possession and joint title.

In the case of dispute between coparceners of Hindu joint family the Magistrate has to find whether, over the individual item of property, this or that coparcener is in exclusive actual possession, or they are in joint physical possession, always a question of fact unconnected with the jointness of title. He must maintain this exclusive or joint possession as the case may be leaving the aggrieved coparcener to get a final reallotment in a partition suit. (Krishnan, J. C.) Mathura Prasad Nand Ram v. State of Vindhya Pradesh.

AIR 1953 Vind Pra 14 : 1953 All WR (Sup) 30 : 1953 Cr LJ 975.

——Joint property—Dispute about portion of property in exclusive possession of one party—Proceedings under S. 145 can be taken.

Even in case of joint property where a portion of such property is in exclusive possession of one of the joint owners and there is dispute between the parties regarding possession of the portion which is likely to cause a breach of peace, proceedings may be taken under S. 145, Criminal P. C.: 40 Cal. 982; AIR 1940 Pat 135 and AIR 1935 Nag 44, Rel. on; 34 Cal 199, Not approved. (Achhru Ram, J.) Wazir Chand v. Rawel Chand.

AIR 1947 Lah 227 : 48 PLR 499 : 48 Cr LJ 844.

——Claim of joint possession—Dispute regarding proprietary right — One party claiming entire

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right—The other party claiming 8 annas right—Magistrate holding it as civil dispute—Magistrate is wrong— The dispute falls under S. 145, Criminal P. C. (Madan, J.) Raj Kishore Narain Singh v. Amirul Hassan.

19 PLT 211.

——Legality of order.

An order declaring that the first party is in possession of one-third of the disputed plots and that the second party is in possession of the remaining portion, is rather a decree in a civil suit adjudicating the rights of contending parties. An order under S. 145 should be merely to declare whom the Magistrate finds to be in actual possession of the property in dispute regarding which proceedings have been taken to prevent a breach of the peace. No proceedings under S. 145 ought to be drawn in a case where the parties are in joint possession although they hold specific shares therein. 4 CWN 426, Foll. (Dass, J.) Jogeshwar Das v. Trilochan Das.

AIR 1920 Pat 835 : 4 Pat 479 : 54 IC 1008 : 21 Cr LJ 224.

(Overruled in AIR 1932 Pat 366 : 34 Cr LJ 115)

——Petitioner in possession on behalf of both parties—Jurisdiction to pass order.

An order under S. 145 cannot be passed by a Magistrate where the petitioner is in possession on behalf of both the parties and wants merely a declaration to that effect. 4 CWN 426, Foll. 31 M 318; 2 Weir 99; Diss. (Sadasiva Iyer, J.) Kandaswami Asari v. Narayan Asari.

AIR 1916 Mad 495 : 2 LW 107 : 26 IC 644 : 16 Cr LJ 52.

29. "Land or water or the boundaries thereof"

See also Note 28—Joint possession.
and Note 57—Subject of dispute.

(a) Collection of fees from pilgrims.
(b) Collection of Khutagari.
(c) Collections and offerings in temple.
(d) Crops and trees and produce thereof.
(e) Dispute as to share in joint property.
(f) Dispute relating to mill.
(g) Dispute relating to right to collect rents and profits.
(h) Easements.
(i) Exhibition of cinema film.
(j) Fishery rights.
(k) Irrigation channel rights.
(l) Live stock.

See Note 29 (n)— Moveables included in immovable property.

(m) Mines and minerals.
(n) Moveables included in immovable property.
(o) Possession of bund.
(p) Possession of temple.
(q) Public right of way.
(r) Right to lac.

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(s) Right to lay warps.

(t) Right to tap trees.

(u) Right to weigh grain in market.

(v) Right to worship and perform puja.

(w) Shares in rents and profits.

29. "Land or water or the boundaries thereof". —(a) Collection of fees from pilgrims.

——Dispute relating to distribution of fees paid for Shradh at Gaya.

A dispute relating to the distribution of fees paid by pilgrims at Gaya for performing Shradh ceremony, cannot be a subject matter for a proceeding under S. 145, Cr. P. C., though there may be a likelihood of a breach of the peace, as the fees are not profits which issue out of law. (Woodroffe and Mookerjee, JJ.) Narayan Misser v. Bhugwan Misser.

3 CLJ 137 : 3 Cr LJ 214.

29. "Land or water or the boundaries thereof" —(b) Collection of Khutagarai.

——Fees Khutagarai, arhat and keali, whether come within expression "land and water" in S. 145 (1).

Certain fees called khutagarai, arhat and keali, levied in respect of boats moored in a shallow channel and dissociated from the ownership of the site are not included within the expression "land or water" as used in Sub-S. (1) of S. 145, Criminal P. C., and as explained in Sub-S. (2) of that section. (Dhavle, J.) Kunjo Mandal v. Sarju Ram Marwari.

AIR 1939 Pat 206 : 20 PLT 164 : 5 BR 539 : 11 RP 573 : 181 IC 176 : 40 Cr LJ 538.

29. "Land or water or the boundaries thereof" —(c) Collections and offerings in temple.

——Ss. 145, 147—Dispute as to right to receive offerings at shrine depending upon right to sit in particular spot—Order can be made either under S. 145 or S. 147.

Where a dispute regarding the right to receive the offerings at a shrine centres round and depends upon the right to sit in a particular spot, the dispute relates either to the possession of the land or to its use. Therefore, an order either under S. 145 or under S. 147, Criminal P. C., can be made. (Bose, J.) Qaji Abdul Majid v. Muhammad Saheb Azizuddin.

AIR 1941 Nag 171 : 1941 NLJ 110 : 14 RN 37 : 195 IC 122 : 42 Cr LJ 675.

——Offerings made to shrines in temples are not "profits" within S. 145.

Offerings made by pilgrims at the shrine do not come within the definition of "profits" in S. 145. Where the dispute relates merely to offerings made, then the dispute is about movable property, and a declaration under S. 145, that one of the parties is in possession of such offerings is an order made without jurisdiction. 37 Cal. 578 and 38 Cal. 387, Ref. (Prideaux, A. J. C.) Raosobhang Singh v. Baktwar Singh.

CRIMINAL P. C. (V of 1898), S. 145—29. "Land or water or the boundaries thereof" — (c) Collections and offerings in temple

AIR 1927 Nag 333 : 103 IC 415 : 23 NLR 84 : 28 Cr LJ 687.

——The right to perform the puja of idol or to have a share of the offerings made to the idol cannot be said to be a right of user of any land as provided in S. 145. If there is such a dispute between the parties, which the Magistrate considers may lead to any breach of the peace he may take such step as he considers necessary under S. 107. (Walmsley and B. B. Ghose, JJ.) Surendra Nath v. Shoshi Bhusan.

AIR 1926 Cal 437 : 52 Cal 959 : 42 CLJ 127 : 92 IC 223 : 27 Cr LJ 239.

(Overruled in AIR 1951 Cal 93 : 52 Cr LJ 940 (FB).)

——S. 145 (1) and (4) —Immoveable property — Offerings at a Karbala—Right to dispute.

A dispute with respect to the collections and offerings at a Karbala cannot be the subject-matter of a proceeding under S. 145, Cr. P. C. 38 Cal. 387 ; 37 Cal. 578, Foll. (Sultan Ahmed, J.) Ghulam Sitian v. Khaniz Khatoon.

AIR 1920 Pat 383 : 5 Pat LJ 246 : 1 Pat LT 608 : 57 IC 92 : 21 Cr LJ 572.

——S. 145, Cl. (2)—Immoveable property—Land—Proceeds arising out of building — Offerings to deity.

Offerings to a deity are not proceeds arising out of a building and so do not come within the scope of Cr. P. C., S. 145 Cl. (2). A declaration under S. 145, that a person is in possession of such offerings made by a Magistrate is without jurisdiction: 37 C. 578, Foll. (Holmwood and Sharfuddin, JJ.) Ram Saran Pattak v. Raghu Nandan Gir.

9 IC 6 : 13 CLJ 445 : 16 CWN 574 : 38 Cal 387 : 12 Cr LJ 3.

(Overruled in AIR 1951 Cal 93 : 52 Cr LJ 940 (FB).)

29. "Land or water or the boundaries thereof" —(d) Crops and trees and produce thereof.

——S. 145 (2)—Cut crop removed from bund in dispute and stored elsewhere long before dispute cannot be subject-matter of proceedings—Proceedings relating to such crop severable from main order—Entire proceedings are not bad. (Narasimham, J.) Jalumuru Kamaraju v. Kenguva Suryanarayana.

AIR 1953 Orissa 99 : ILR (1951) Cut 576 : 18 Cut LT 207 : 1953 Cr LJ 737.

——S. 145 (2)—Crop or produce of land—Cut and severed trees of land.

Trees which are cut and severed a few hours or days before the preliminary order and are still lying on or near the land come within the expression 'crop or produce of land' and can be attach-

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ed. (Panchapakesa Ayyar, J.) A. Rampus v. A. Subba Reddi.

AIR 1950 Mad 658 : 63 MLW 409 : 1950 MWN Cr 32 : 1950 MWN 148 : 1950-1 MLJ 213.

——S. 145 (4)—Crops severed and stocked on land which is not subject-matter of dispute, cannot be attached. (Imam and Narayan, JJ.) Deonandan Singh v. Thakur Singh.

AIR 1949 Pat 58 : 1949 PWR 34 : 1949 AWR Sup 45 : 27 Pat 670 : 49 Cr LJ 657.

——S. 145 (2)—"Crops or other produce of land" includes crop cut and detached from land : AIR 1949 Patna 58, Dissent. (Shukla, J.) United State of Saurashtra v. Shah Mavji Pragji.

2 Sau LR 125.

——S. 145 (2)—'Crop', whether includes harvested crop.

From the wording of Sub-S. (3) of S. 145, it is clear that the word 'crop' means both standing and harvested crop and it has the same meaning in Sub-S. (2).

But if the crop has been removed and is wholly unconnected with and dissociated from the land in dispute, then the Magistrate is deprived of jurisdiction to deal with it under S. 145 (2). (Lobo, Ag. C. J. and Thadani, J.) Kimat Rai v. Emperor.

ILR (1945) Kar 72.

——Crops cut and severed from land, whether immovable property.

Crops cut and severed from land are movable property and not 'immovable' within the meaning of S. 145, Cl. (2), to which alone the provisions of S. 145, Criminal P. C., are applicable. (Chatterji, J.) Rajindra Lall v. Brich Kurmi.

AIR 1938 Pat 527 : 19 PLT 728 : 5 BR 118 : 11 RP 276 : 178 IC 582 : 40 Cr LJ 125.

——Share in annual produce of mango grove is not specific tangible property susceptible of exclusive possession.

Property which comes into existence anew each season and the extent of which may grow or shrink in comparison with the crop of the previous season, cannot be held to be specific tangible property capable of such demarcation as would render it susceptible of exclusive possession. A share in the annual produce of such property (a share in annual produce of mango-grove) cannot, therefore, be held to be a specified or demarcated portion of it. (Grille, J. C.) Laxmanappa v. Ganu Singh.

AIR 1935 Nag 44 : 17 NLJ 216 : 1935 Cr C 254.

——The Court has no jurisdiction over the crops harvested before the preliminary order in S. 145 proceedings. (Bardswell, J.) Banga Thathalu Reddi v. Panga Pedda Paramma.

1934 MWN 405.

——Crops which have been cut and gathered on the threshing floor are not crops or other produce of land within the meaning of Sub-S. (2) of S.

CRIMINAL P. C. (V of 1898), S. 145 — 29. "Land or water or the boundaries thereof" — (d) Crops and trees and produce thereof

145. 30 Cal. 110, Rel. on. (Rupchand Bilaram and DeSouza, A. J. Cs.) Relumal v. Pherumal.

AIR 1928 Sind 193 : 111 IC 441 : 22 SLR 386 : 29 Cr LJ 857.

——The word "crops" in S. 145, cl. (2), includes cut and stored crops about which there is a dispute likely to cause a breach of the peace and is not restricted to standing crops. 30 Cal. 110; 28 All. 266; AIR 1927 All. 99; AIR 1922 Oudh 199, Diss.; 2 Weir 108 and 13 Cr LJ 295, Rel. on. (Percival. J. C. and Aston, A. J. C.) Rahimdino v. Emperor.

AIR 1928 Sind 68 : 105 IC 813 : 22 SLR 151 : 9 AI Cr R 165 : 28 Cr LJ 989.

——Standing crops are immovable property within the meaning of Cl. (2) of S. 145. But crops that have been severed from the land are not immovable property at all and therefore a dispute relating to the crops which have been already cut and stored before issue of notice under S. 145 is not covered by S. 145. (Banerji, J.) Situ Das v. Jairi Das.

AIR 1927 All 99 : 7 LRA Cr 193 : 98 IC 433 : 27 Cr LJ 1363.

——Crops — Jurisdiction of Magistrate — Order good in part and bad in part.

The Magistrate has power under the section to deal with moveable property which represents the produce of the land in dispute, if the produce is attached to or if the same is cut and lying on the land, but not when the produce has been removed or dissociated from the land. An order but not a conviction is severable and the bad part can be severed from the good part which can be maintained. (Atkinson and Jwala Prasad, JJ.) Sundermal v. Jhari Lal.

AIR 1917 Pat 183 : 2 Pat LW 54 : 2 Pat LJ 637 : 41 IC 132 : 18 Cr LJ 756.

——Crops, dispute as to.

The right to make collection and appropriate the crops or produce of a village or shares in a village comes within the purview of S. 145, Cr. P. C. (Jwala Prasad, J.) Punit Mahton v. Sri Raju Julhaq.

AIR 1917 Pat 217 : 2 Pat LW 67 : 40 IC 300 : 18 Cr LJ 652.

——Trees severed from land.

Trees severed from land do not come within the purview of S. 145 (2) and no order can be made under S. 145 in respect of them. (Shadilal, J.) Sajad Hussain v. Nanak Chand.

AIR 1917 Lah 35 : 22 PWR Cr 1917 : 39 IC 301 : 18 Cr LJ 461.

——Ss. 145, 147—Dispute as to trees—Applicability.

Quaere:—Whether a proceeding under S. 145 or under S. 147 is proper in a case where only trees are claimed and not the land? (Mitra and Ormond, JJ.) Maharaja Surja Kanta Acharja

CRIMINAL P. C. (V of 1898), S. 145 — 29. "Land or water or the boundaries thereof" — (d) Crops and trees and produce thereof

Bahadur v. Maharaja Jagadindra Nath Roy Bahadur.

11 CWN 198 : 5 Cr LJ 32.

——"Crops or other produce of land" — Crop of Mahua.

The words "crops or other produce of land" as used in S. 145 (2) do not include crops which have been severed from the land upon which they grew. A Magistrate has therefore no jurisdiction to attach under S. 146 of the Code a crop of mahua no longer growing on the trees. (Richards, J.) Chaurasi v. Rama Shankar.

AWN 1905, 278 : 3 ALJ 13 : 28 A 266 : 3 Cr LJ 52.

29. "Land or water or the boundaries thereof" —(e) Dispute as to share in joint property.

——Dispute as to share between joint possessors.

Where properties are jointly held by the parties, and the dispute is only about their shares, Ss. 145 and 146 have no application. (Beachcroft and Ghose, JJ.) Ram Bitsur Majhi v. Joy Ram Majhi.

AIR 1920 Cal 894 (1) : 61 Ind Cas 174 : 22 Cr LJ 350.

——Right to share in property.

A right to fractional shares in family properties may be a right to tangible immovable property even when shares are not definitely ascertained. (Spencer, J.) Bulkis Bivi v. Nagoor Kanni Rowther.

AIR 1915 Mad 1105 : 1915 Mad WN 267 : 17 MLT 225 : 16 Cr LJ 284.

29. "Land or water or the boundaries thereof" —(f) Dispute relating to mill.

——S. 145 (2) — "Land" — Meaning — Dispute relating to mill —Words and Phrases.

Land in S. 145 is used as synonymous with immoveable property which includes things attached to earth. Mill therefore which is attached to the earth will fall within the scope of immoveable property or land. (Somasundaram, J.) Abu Syed Sahib v. Ahmed Mohideen.

AIR 1951 Mad 722 : 1951-1 Mad LJ 429 : 1951 MWN Cr 57 (1) : 1951 MWN 229 (1).

29. "Land or water or the boundaries thereof" —(g) Dispute relating to right to collect rents and profits.

——Right to collect rent.

A right of collecting rent is a right concerning "tangible immoveable property or land" and a dispute as to such a right is within S. 145 of the Code. 16 C. 513; 15 C. 527, Foll. (Krishnan, J.) In re. Medai Dhalvoy Sirumalyappa Mudaliar.

AIR 1918 Mad 1203 : 37 IC 524 : 18 Cr LJ 156.

——S. 145 (1) and (2)— Immoveable property — Right to rent — Rent —Collection —Dispute regarding, between Lakherajdar and Patnidar — Decision in the absence of tenants— Produce and rent.

CRIMINAL P. C. (V of 1898), S. 145 — 29. "Land or water or the boundaries thereof" — (g) Dispute relating to right to collect rents and profits

In respect of several plots of land all held by tenants on a yearly rent of half of the produce, there was a dispute between the Lakherajdar and the Patnidar as to the right to collect rent. As regards some of the plots there was a dispute as to what tenants were in possession. Held, that as regards the plots about which there was a dispute as to the tenants in possession, the Magistrate should not have made any order in the absence of the tenants who might be very seriously prejudiced by an order in favour of one or the other of the parties to the proceedings. Though if the question was one of dividing a hitherto undivided share the section might not apply, still in the present case the section applied as it was merely a question of rent and it so happened that the rent was half the share of the produce. (Chitty and Beachcroft, JJ.) Haridas Samanta v. Abdul Matteb Mullick.

AIR 1916 Cal 727 : 19 CWN 959 : 30 IC 142 : 16 Cr LJ 590.

——Right to collect rent.

A dispute as to the right to collect rents in a dispute within the meaning of the section. (Spencer, J.) Bulkis Bivi v. Nagoor Kanni Rowther.

AIR 1915 Mad 1105 : 17 MLT 225 : 1915 Mad WN 267 : 16 Cr LJ 284.

——Dispute as to collection of rents.

A dispute between the co-sharers of a village as to who is entitled to collect the rent from the tenants is not a dispute about the rents or profits of land within the meaning of S. 145 and therefore a Magistrate has no jurisdiction to initiate proceedings under S. 145 in respect of such dispute: (Scott, J. C.) Mohammed Fazil v. Mohammed Abdul Samad.

10 OC 89 : 5 Cr LJ 394.

29. "Land or water or the boundaries thereof" —(h) Easement.

——Ss. 145 and 147—Applicability— Easement— Dispute as to.

S. 147, Cr. P. Code, and not S. 145, applies to a dispute about an easement in respect of which action has to be taken. (Kotval, A. J. C.) Asaram v. Chotulal.

AIR 1921 Nag 100 : 64 IC 238 : 22 Cr LJ 768.

——Ss. 145 and 147—Easement —Land or water.

Where the subject-matter of the dispute is an easement to spread fishing nets on another's land without any claim to possession of that land, the proper section is 147 and not 145. (Walmsley and Greaves, JJ.) Kali Kumar Das v. Bejoy Gobinda Mitra.

AIR 1920 Cal 561 : 57 IC 937 : 21 Cr LJ 697.

29. "Land or water or the boundaries thereof" —(i) Exhibition of cinema film.

——Dispute concerning land.

If the dispute is not concerning the building of a Cinema but concerning the film to be exhibited

CRIMINAL P. C. (V of 1898), S. 145 — 29. "Land or water or the boundaries thereof" — (i) Exhibition of cinema film

in it S. 145 cannot apply. (Kayani, J.) Najam-ul-Hussain v. The Crown.

AIR 1950 Lah 132 : Pak LR 1950 Lah 172 : Pak Cas 1950 Lah 410 : 51 Cr LJ 1142.

29. "Land or water or the boundaries thereof" —(j) Fishery rights.

——Fisheries—Ss. 145 and 147.

The subject-matter of proceedings under S. 147 may be fisheries to which one of the parties may have a right apart from any right to the land upon which the fishery stands. The subject-matter of the proceedings under S. 145, if it relates to fisheries must relate to particular local area where the fishery extends. (Distinction between two cases pointed out). (Courtney-Terrell, C. J. and Kulwant Sahay, J.) Ramroop Mahton v. Mano Mian.

AIR 1934 Pat 86 : 35 Cr LJ 481.

29. "Land or water or the boundaries thereof" —(k) Irrigation channel rights.

——Channel not used for irrigation is not land or water but when used there can be "dispute concerning water." (Dalal. J. C.) Chote Lal v. Emperor.

AIR 1924 Oudh 341 : 76 IC 691 : 25 Cr LJ 227.

29. "Land or water or the boundaries thereof" —(l) Live stock.

See Note 29.—"Land or water or the boundaries thereof"— (n) —Moveables included in immovable property.

29. "Land or water or the boundaries thereof" —(m) Mines and minerals.

——Sub-soil minerals, disputes as to— Such disputes come within scope of section where question is as to actual physical possession, and not merely as to right to prospect or to conduct mining operations. (Meredith, Sinha and Das, JJ.) S. M. Yaqub v. T. N. Basu.

AIR 1949 Pat 146 : 30 PLT 41 : 27 Pat 1027 : 50 Cr LJ 299 (SB).

——Dispute as to possession of minerals—Proceedings under S. 145, if can be started.

Proceedings under S. 145, Criminal P. C., can be appropriately instituted in cases of disputes as to the possession of minerals. (Harries, C. J. and Rowland, J.) Ranchi Zamindari Co., Ltd. v. Pratab Udainath Sahi Deo.

AIR 1939 Pat 209 : 20 PLT 105 : 5 BR 711 : 11 RP 657 : 18 Pat 215 : 182 IC 89 : 40 Cr LJ 631.

——Applicability — Working of mines and minerals.

A dispute as regards mines and minerals and the right to work mines falls within the scope of S. 145, Criminal P. C.

If a party under a mining lease is in actual possession of the mines and minerals as profit a prendre they can enforce their possession not only by a civil suit but can claim to be maintained in their possession by an order under Sec. 145 of the Code of Criminal Procedure. Whatever

CRIMINAL P. C. (V of 1898), S. 145 — 29. "Land or water or the boundaries thereof" — (m) Mines and minerals

difficulty might have been felt in the construction of the corresponding section in the Code of 1878 as to whether Sec. 145 can comprise a dispute relating to mines and minerals it is clear that the present section provides an explanation so as to remove any doubt whatsoever upon the point. No doubt is entertained upon the point that mines and minerals and the right to take mines and minerals can well be dealt with by an order under Sec. 145. But behind all this rests the fundamental idea in connection with Sec. 145 of positive physical possession. The question as to whether Sec. 145 is appropriate must be determined in the circumstances of each case. (Jwala Prasad, J.) Mahadeo Dutt v. J. N. Sarkar.

AIR 1922 Pat 340: (1922) Pat HCC 122: 71 IC 871 : 24 Cr LJ 263.

——Ss. 145 and 146—Immovable property—Mining license confers an estate in the soil.

The definition of land as given in the Criminal Procedure Code of 1908 is wide enough to cover mining rights and even prospecting or boring licenses which can only be utilised by going upon the land and exercising some rights relating to it. Nor S. 145, Cr. P. C. is limited in its scope to dispute relating to "actual possession" only, if by that expression is meant possession by squatting on the land. It is not correct to say that a license to dig minerals confers no interest or estate in the soil, and that a dispute concerning mining rights is not one with which the Magistrate can deal under S. 145. Other proceedings might serve equally well to preserve tranquillity, but that is a matter on which the Magistrate is entitled to use his own discretion. Indian Iron Steel Company v. Bonso Gopal. 32 CLJ 54 distinguished. (Walmsley and Suhrawardy, JJ.) Bimala Prasad Mookerjee v. Tata Iron and Steel Co., Ltd.

AIR 1922 Cal 83 : 35 Cal LJ 456 : 71 IC 237 : 24 Cr LJ 108.

——Right to bore for minerals—Does not concern land.

Where a dispute concerns the rights of the respective parties to bore for minerals over a specific area and does not concern land or involve any question of actual possession, the Court has no jurisdiction to go into intricate questions of title and possession, and if in such a case there is a likelihood of a breach of the peace proceedings under S. 107 of the Code are more appropriate than under S. 145. (Chauduri and Newbould, JJ.) The Indian Iron and Steel Company, Ltd. v. Banse Gopal.

AIR 1920 Cal 824 : 32 CLJ 54 : 59 IC 403 : 22 Cr LJ 99.

29. "Land or water or the boundaries thereof" —(n) Moveables included in immovable property.

——Dispute as to livestock.

CRIMINAL P. C. (V of 1898), S. 145 — 29. "Land or water or the boundaries thereof" — (n) Moveables included in immovable property

Livestock being neither land nor water, proceedings under this section in respect of such property are without jurisdiction. (Muhammad Munir and Muhammad Jan. JJ.) Fate Muhammad Khan Tiwana v. The Crown.

AIR 1949 Lah 273 : Pak LR (1949) Lah 466 : Pak Cases 1950 Lah 102 : 51 Cr LJ 55.

——Order under S. 145 in respect of stock of medicines, if can be passed.

The definition of land in Cl. (2) of S. 145, Criminal P. C., cannot include the movable property, such as a stock of medicines in a shop. Consequently, no order under the section can be passed in respect of the stock of medicines. (Ghulam Hasan, J.) Mahmood Beg v. Ehsan Beg.

AIR 1941 Oudh 515 : 1941 OWN (CC) 848 (2) : 1941 AWR (CC) 247 : 14 RO 69 : 195 IC 236 : 42 Cr LJ 710.

——Movable property.

Magistrate is not competent to pass any order in regard to movable property though contained in immovable property. (Piggott and Walsh, JJ.) Mahadei v. Beni Prasad.

AIR 1920 All 225 : 42 All 214 : 21 Cr LJ 242.

——Ss. 145 and 146—Cattle.

A Magistrate ordered attachment of a matt under Cl. (4) of S. 145 and directed a police officer to take charge. The latter attached matt and also took possession of cattle in it. The Magistrate finally ordered attachment under S. 146. The attachment of cattle was legal, as they could only be made over to the person who was entitled to the matt which matter was to be determined by a competent Court. (Roe and Jwala Prasad, JJ.) Bharat Das v. Ramcharitar Das.

AIR 1916 Pat 42 : 1 Pat LJ 356 : 2 Pat LW 367 : 38 IC 319 : 18 Cr LJ 287.

——S. 145 (4)—Immoveable property—Elephant—Attachment —Elephant if can be attached.

An elephant cannot be attached under S. 145 but if a forest which contains an elephant is attached the person in whose favour the final order is passed is entitled to possession of the elephant. (Sankaran Nair, J.) Kochunny v. Manavikrama Rajah Amyal.

(1912) MWN 540 : 14 IC 318 : 13 Cr LJ 222.

29. "Land or water or the boundaries thereof" —(o) Possession of bund.

——Where the subject-matter of dispute is possession of a complete and existing bund and not a right to erect a bund, the case falls within S. 145. 15 CLJ 267 and 4 CWN 779, Dist. (Suhrawardy and Graham, JJ.) Sashi Bhusan Chowdhury v. Debendra Gati Ram.

AIR 1930 Cal 59 : IR 1930 Cal 633 : 33 CWN 1004 : 125 IC 857 : 1930 Cr C 11 : 31 Cr LJ 944.

CRIMINAL P. C. (V of 1898), S. 145

29. "Land or water or the boundaries thereof" —(p) Possession of temple.

——Temple dispute.

Section 145 applies to a dispute which relates not only to the offerings but also to the possession of the temple. Hence a person, who as a thekadar on behalf of the managing committee of the temple is in possession, is entitled to succeed in the proceeding started under the section. (Harish Chandra, J.) Hardeo v. Ram Lal.

AIR 1953 All 382 : 1953 All Cr R 27 (2) : 1953 ALJ 127 : 1953 All WR (HC) 55 : 1953 Cr LJ 828.

——S. 145 (2)—Temple —"Building"—Meaning.

A dispute as to possession of a temple and for such indicia of its possession as the holding of its key is cognizable by a Magistrate under S. 145 (2), Cr. P. Code as a temple is a "building" under S. 145. (Ayling, J.) Palaniyandi Pandaram v. Palaniappa Thevan.

AIR 1917 Mad 840 : 34 IC 651 : 17 Cr LJ 235.

29. "Land or water or the boundaries thereof" —(q) Public right of way.

——No action under S. 145 can be taken where the claim is only to the right to use land either as a public road or as a pathway. (Addison, J.) Turab Ali Khan v. Shiromani Gurudwara Prabandhak Committee.

AIR 1933 Lah 145 : 34 Cr LJ 616.

"29. "Land or water or the boundaries thereof" —(r) Right to lac.

——Dispute as to lease of lac produce whether dispute with regard to land.

It is true that lac itself would not be immovable property, but it can only be propagated on trees and is so connected with the trees that any dispute with regard to it must also involve a dispute with regard to land or right to enter upon that land for the purpose of taking the lac. (Staples, A. J. C.) Emperor v. Narsing Das Ganga Dhar.

AIR 1934 Nag 112 : 7 RN 60 : 30 NLR 311 : 151 IC 348 : 35 Cr LJ 1381.

——Ss. 145 and 147—Immoveable property—Lac is not 'land'.

'Lac' does not fall within the meaning of the expression 'land' in S. 145 of the Code and proceedings held under that section attaching the lac trees are without jurisdiction. The matter does not come under S. 147 and even if it does no order for attachment could be made. (N. R. Chatterjee and Cuming, JJ.) Ali Mohammad v. Fakiruddi Munshi.

AIR 1920 Cal 708 : 24 CWN 1039 : 32 CLJ 255 : 59 IC 643 : 22 Cr LJ 131.

29. "Land or water or the boundaries thereof" —(s) Right to lay warps.

——Ss. 145 and 147—Immoveable property—Right to lay warps—Dispute.

CRIMINAL P. C. (V of 1898). S. 145 — 29. "Land or water or the boundaries thereof" — (s) Right to lay warps

The right to lay warps is not a right to the possession of land but is a right to the use of it and the Court should deal with the matter not under S. 145 but under S. 147 of the Cr. P. Code. (Oldfield, J.) Sankara Kylasa Mudaliar v. Kuthalingam Mudaliar.

AIR 1919 Mad 812 : 47 IC 877 : 19 Cr LJ 977.

29. "Land or water or the boundaries thereof" —(t) Right to tap trees.

——Tapping trees, right of.

The right to tap a tree may be the subject of proceedings under S. 145. (Roe and Jwala Prasad, JJ.) Jibhlal Mato v. Emperor.

AIR 1918 Pat 237 : 3 PLJ 316 : 19 Cr LJ 656.

29. "Land or water or the boundaries thereof" —(u) Right to weigh grain in market.

——Immoveable property—Dispute about right to weigh grain in market is not covered by the section. (Rafique, J.) Maqbul Ahmad v. Emperor.

AIR 1922 All 430 (1) : 20 ALJ 694 : LR 3 A 128 (Cr) : 68 IC 836 : 23 Cr LJ 612.

29. "Land or water or the boundaries thereof" —(v) Right to worship and perform puja.

——Dispute as to right of worship only —S. 147 and not S. 145, is proper.

Where the real dispute between the parties was as to the right to worship in the temple and not as regards the possession of the temple.

Held, that the proper section under which action should be taken by the Magistrate to prevent a breach of peace is S. 147 and not S. 145. 16 MLT 427, 29 Mad. 237 and 11 Mad. 323. Rel. on. 17 Cr. LJ 235, Dist. (Krishnan, J.) Sinnaswami Chetti v. Pannadi Palani Goundan.

AIR 1925 Mad 779 : 88 IC 2 : 48 MLJ 528 : 26 Cr LJ 1057.

——Ss. 145 and 147—Subject-matter —Dispute of absolute continuous possession dealt with.

As S. 145 only deals with rights of absolute continuous possession of immoveable property, proceedings under it are entirely without jurisdiction unless they are directed to the decision of absolute continuous possession of either party. As the right of a party, who does not claim anything beyond the right to worship on one day in the year and the right to make due and proper preparations for the holding of that worship by erecting huts for the purpose of holding the Puja, is an easement and not in the nature of possession, such a party cannot be made a party to a proceeding under S. 145. (Holmwood and Imam, JJ.) Manik Chandra Chakravarti v. Preo Nath Kuar.

17 CLJ 397 : 17 CWN 205 : 17 IC 533 : 13 Cr LJ 789.

29. "Land or water or the boundaries thereof" —(w) Shares in rents and profits.

——Batai share of zemindar — Applicability of S. 145 to dispute relating to.

CRIMINAL P. C. (V of 1898), S. 145 — 29. "Land or water or the boundaries thereof" — (w) Shares in rents and profits

Section 145, Criminal P. C., does not apply to a dispute relating to an undivided share in land or to an undivided share in the produce of the land, because S. 145, Sub-Ss. (4) and (6), Criminal P. C., contemplate that one of the parties shall be or shall not be put in possession of the subject-matter of the dispute and a party cannot be put in possession of an undivided share of land or its produce. But a batai share of a zemindar in the produce is not an undivided share and S. 145 applies to disputes relating to such a share. In the case of land which is owned by a zemindar and cultivated by him with his haris he must, before division of the produce or batai, be deemed to be in possession of the land and of the produce of the land, and that the haris are merely his agents for the cultivation, and that until the crop is divided between the zemindar and the haris, it is really the zemindar who has custody of the crops and divides them. This position is not altered merely because there is a jagirdar who is entitled also to his share. (Davis, J. C. and Lobo, A. J. C.) Muhammad Araf v. Satramdas Sakhimal.

AIR 1936 Sind 143 : 9 RS 60 (2) : 164 IC 969 : 37 Cr LJ 1030.

——S. 145 (2) —Applicability —No dispute as to possession — Co-sharers— Collections exclusively by lambardar.

Where the rents in kind are exclusively collected by the lambardar and the other co-sharers are only entitled to a certain share, the dispute about the shares of the co-sharers is not a dispute about possession which is admittedly with the lambardar, so as to make the provisions of section 145 applicable. The case does not come under cl. 2, as the words "crops or other produce of land" refer only to the crops or other produce while still attached to the land. (Daniels, J. C. and Wazir Hasan, A. J. C.) Emperor v. Ram Bhajan.

AIR 1922 Oudh 199 : 25 OC 137 : 69 IC 90 : 23 Cr LJ 650.

30. Likely to cause a breach of the peace.

(a) Evidence.

(b) Jurisdiction, foundation of.

(c) Nature of breach of the peace contemplated.

(d) Recording of fact of existence of likelihood of breach.

See also Note 44—Preliminary order.

30. Likely to cause a breach of the peace.— (a) Evidence.

Since an apprehension of a breach of the peace arises only when both the parties start asserting their right of possession physically and the report of the Station Officer clearly showed that there was litigation between the parties and both of them wanted to take actual possession, the contention that there was a likelihood of a breach of

CRIMINAL P. C. (V of 1898), S. 145 — 30. Likely to cause a breach of the peace—(a) Evidence

the peace unless the applicant went to the land in dispute is not tenable. (Nigam, J. C.) Sm. Dakhan v. Madholal.

AIR 1953 Ajmer 74 : 1953 Cr LJ 1788.

——S. 145 (1)—Sufficiency of material for passing preliminary order.

Where the Magistrate had before him the application for action under S. 145 and also the police report which clearly showed that a dispute did exist with regard to the property and from this the Magistrate inferred that the dispute was of such a nature as was likely to cause a breach of the peace, it cannot be said that he acted wrongly and that his order became one without jurisdiction. It cannot be said that the material was not sufficient to justify the inference. (Kidwai, J.) Ali Shabber v. Haider Husain.

AIR 1953 All 49 : 1952 ALJ 611 : 1953 Cr LJ 215.

——For assumption of jurisdiction under S. 145 existence of dispute likely to cause breach of peace is essential— Magistrate initiating proceedings on police report which does not disclose any existence of dispute likely to cause breach of peace, acts without jurisdiction. (P. L. Bhargava, J.) L. Babu Ram v. Ram Prasad.

1951 AWR (HC) 58.

——Initiation of proceedings, held within jurisdiction.

The constable at first reported an apprehension of a breach of the peace. The Assistant Sub-Inspector then held an enquiry and before him, both parties claimed to be in possession of the land. In his report he asked for action under S. 144, Criminal P. C.. against the first party. The first party then filed a petition of protest in which it was asserted that they were in possession. The Sub-Divisional Magistrate, by his order prohibited both the parties from going upon the land. Then the Deputy Magistrate, in his report, recommended proceeding under S. 145, Criminal P. C. He said, "At present there is absolutely no apprehension of a breach of the peace". Proceedings were drawn up under S. 145, on the recommendation of the Deputy Magistrate:

Held, that reading the report of the Deputy Magistrate along with that of the Assistant Sub-Inspector, it was apparent that what the Deputy Magistrate actually meant was that there was no immediate apprehension of breach of the peace such as would justify a proceeding under S. 144, Criminal P. C. He, however, recommended a proceeding under S. 145, Criminal P. C. Though the crop was not fit for cutting at the time, both the parties were claiming the right to cut it and a clash was likely to take place between them at the time of cutting or even before, if any party wanted to cut it before it was completely ripe. A dispute undoubtedly existed at the time, and it was of such a character that it

CRIMINAL P. C. (V of 1898), S. 145 — 30. Likely to cause a breach of the peace—(a) Evidence

was likely to cause a breach of the peace unless proceedings were taken under S. 145, Criminal P. C. Thus it could not be doubted that there was "a present fear" that the dispute that existed was likely to cause a breach of the peace unless proceedings were taken under S. 145, Criminal P. C. (Manohar Lall and Chatterji, JJ.) Shibnarayan Das v. Satyadeo Prasad.

AIR 1943 Pat 44 : 9 BR 73 : 15 RP 168 : 203 IC 275 : 44 Cr LJ 25.

——S. 145 (1)—No mention of existence of dispute likely to cause breach of peace.

Where the petition under S. 145 (1), Criminal P. C., contains no information that a dispute likely to cause a breach of the peace existed, the Magistrate is not justified in taking action under S. 145. (Mackney, J.) Meah A. v. Steel Brothers & Co. Ltd.

AIR 1938 Rang 229 : 11 R Rang 40 : 176 IC 266 : 39 Cr LJ 708.

——Positive evidence as to likelihood of breach must exist—Religious nature of dispute leads to no inference — Past conduct of parties is good evidence.

The object of S. 145 is to bring to an end by a summary process, disputes relating to land, etc., which are in their nature likely, if not suppressed, to end in breaches of the peace. But the mere circumstance that the dispute is one of a religious nature is not enough. There must be positive evidence on the record that the breach of the peace is likely to occur if proceedings under this section are not taken. Where it appears that the land which in 1880 was shown as a part of the Mahomedan graveyard has been gradually brought under cultivation to the prejudice of the Muhammadan community by the owners who were Brahmins and no breach of the peace has occurred during the last 40 years, held that it was hardly likely that any such untoward result should now ensue, if the property is not attached under S. 146. (Moti Sagar, J.) Bhagwan Das v. Maula Dad Khan.

AIR 1924 Lah 678 : 75 IC 990 : 25 Cr LJ 78.

——An order under S. 145 without any enquiry and when there is no evidence of likelihood of a breach of the peace cannot be sustained. (Beadon, J.) Bogha v. Emperor.

6 PLR 1913 : 18 IC 890 : 1913 PWR Cr 2 : 14 Cr LJ 138.

——"Is satisfied."

The question whether there is a likelihood of the breach of peace which would warrant the institution of proceedings under S. 145 should be judged by the magistrate in each case on its own merits. (Mitra and Ormond, JJ.) Maharaj Bahadur Singh v. Rajah Ranjit Singh Bahadur.

11 CWN 835 : 6 Cr LJ 36.

CRIMINAL P. C. (V of 1898), S. 145

30. Likely to cause a breach of the peace. —(b) Jurisdiction, foundation of.

——No likelihood of breach of peace — Order regarding possession.

Though ordinarily where the Magistrate comes to a conclusion that there was no likelihood of breach of peace, any further order passed by him in connection with the question of possession is beyond his jurisdiction there are certain cases where in spite of the Magistrate holding that there was no likelihood of breach of peace, he still, in the interests of justice, has got to pass an order regarding possession. (Suryanarayana Rao, J.) Hanmantha v. Hanifabi.

AIR 1953 Hyd 185 : ILR (1952) Hyd 346 : 1953 Cr LJ 1114.

——Apprehension is necessary.

Proceedings under S. 145 cannot be validly initiated or continued without an apprehension of a breach of the peace. (Dhavle, J.) Gobardhan Das v. Suresh Chandra.

AIR 1942 Pat 489 : 9 BR 91 : 15 RP 180 : 203 IC 521 : 44 Cr LJ 95.

——Jurisdiction, foundation of— Essential conditions.

For the foundation of jurisdiction of the Magistrate under S. 145, Criminal P. C., two essential conditions are that there should be a dispute likely to cause a breach of the peace and that the dispute should concern land. (Dhavle, J.) Inderdeo Singh v. Kesho Singh.

AIR 1938 Pat 1 : 18 PLT 886 : 4 BR 211 : 10 RP 372 : 173 IC 107 : 39 Cr LJ 268.

——Jurisdiction to enquire into possession is founded on the existence of a probability of breach of peace— One party eliminating —Probability no longer existing — No jurisdiction in Magistrate to conduct enquiry. (Wadsworth and K. S. Menon, JJ.) Pakkireya Pillai v. Official Receiver, West Tanjore.

1936 MWN 209.

——Preliminary order —When to be passed —Insufficiency of time to resort to civil remedy.

There must be a present danger of a breach of the peace before an order under S. 145, Criminal P. C., is passed but there need not be a danger of an immediate or imminent breach of the peace. It is not material whether there is or is not sufficient time for persons interested to resort to civil remedy, inasmuch as if neither party intends to resort to civil remedy, the fact that there is time to do so does not affect the likelihood of a breach of the peace. A preliminary order under S. 145, is entirely suitable if a dispute likely to cause a breach of the peace exists and the actual breach is likely to occur some time later. (Macnair, J. C.) Baliram Patil v. Mt. Gangoo.

AIR 1932 Nag 134 : 28 NLR 154 : Ind Rul (1932) Nag 142 : 140 IC 231 : 33 Cr LJ 937.

CRIMINAL P. C. (V of 1898), S. 145 — **30. Likely to cause a breach of the peace — (b) Jurisdiction, foundation of**

——It is necessary for making an order under S. 145 that the Magistrate should be satisfied at the time of drawing up the proceedings that there is then existing a likelihood of breach of the peace arising from the disputes between the parties with regard to the land in question. The making of an order, therefore, some months after the report on which it was purported to be passed, cannot be supported. (Suhrawardy and Costello, JJ.) Anandi Lal Mukherjee v. Lukh Chand Mundal.

AIR 1930 Cal 715 : 58 Cal 388 : 129 IC 610 : 34 CWN 899 : 1930 Cr C 1115 : 32 Cr LJ 398.

——Where there is no likelihood of breach of the peace occurring, proceedings under S. 145 are incompetent. (Chotzner and Duval, JJ.) Nikunja Behari v. Usbah Devi.

AIR 1927 Cal 944 : 100 IC 117 : 7 AI Cr R 357 : 31 CWN 242 : 28 Cr LJ 245.

——The only two essential conditions which not only confer jurisdiction on the Magistrate, but make it imperative on him to take the preventive proceedings contemplated by S. 145 are firstly that there should be a dispute over land or water, and secondly, that such dispute is likely to cause a breach of the peace. (Kennedy, J. C. and Rupchand Bilaram, A. J. C.) Mahommed Mahdi Shah of Pir Jhando v. Wahdalshah.

AIR 1926 Sind 53 : 89 IC 156 : 26 Cr LJ 1292.

——The apprehension of a breach of the peace is the first condition necessary to give the Magistrate jurisdiction under this section, and if it is found that there is no longer any such apprehension the Magistrate's jurisdiction ceases. (Newbould and Suhrawardy, JJ.) Mahommad Khandu Sarkar v. Sadakali Sheikh.

AIR 1923 Cal 577 : 76 IC 963 : 38 CLJ 284 : 25 Cr LJ 291.

——Directions under S. 145 after finding that there was no breach of the peace are without jurisdiction. (Ramesam, J.) Mahalakshmi v. Subbarayadu.

AIR 1923 Mad 472 (1) : 17 LW 429 : 24 Cr LJ 783.

——Foundation of jurisdiction taken away— Magistrate cannot act.

If, during proceeding under the section, circumstances arise which take away the initial jurisdiction of the Magistrate, the jurisdiction must cease and anything done after that is without jurisdiction. (Wazir Hasan, A. J. C.) Arjun Singh v. Chandan Khan.

AIR 1921 Oudh 6 : 24 OC 167 : 63 IC 321 : 22 Cr LJ 625.

——Powers of Magistrate —Order not justified.

The Magistrate is not justified in making an order in favour of one of the parties, where there is no evidence to show that there is a likelihood of a breach of peace between the parties or either

CRIMINAL P. C. (V of 1898), S. 145 — 30. Likely to cause a breach of the peace — (b) Jurisdiction, foundation of

of them. (Beachcroft and Ghosh, JJ.) Rasik Chandra Hore v. Jagabandhu Roy.

AIR 1921 Cal 261 : 25 CWN 214 : 62 IC 326 : 22 Cr LJ 502.

——Per Newbould J.—S. 145 is applicable where the report shows that there is a likelihood of a breach of peace and the dispute concerns land. If the Magistrate is unable to find possession, he will act under S. 146, if necessary. (Choudhury and Newbould, JJ.) The Indian Iron and Steel Company v. Banso Gopal Tewari.

AIR 1920 Cal 824 : 32 CLJ 54 : 59 IC 403 : 22 Cr LJ 99.

——Duties of Magistrate —Breach of the peace—Essentials to give jurisdiction — Description of subject-matter to be precise.

In an order directing the issue of proceedings under S. 145 the Magistrate was of opinion that there was no likelihood of a breach of the peace acted without jurisdiction as the dispute was not one relating to possession. Held, that Magistrate acted wihout jurisdiction as the basis of jurisdiction in cases of this character is the likelihood of a breach of the peace. Want of a clear specification of the subject-matter of disputes in the proceedings in such cases is a serious defect. (Choudhuri and Newbould, JJ.) Sib Narain Mookerjee v. Satish Chandra Ghosal.

AIR 1920 Cal 344 : 24 CWN 621 : 57 IC 161 : 31 CLJ 369 : 21 Cr LJ 593.

——S. 145 (1)—Foundation of jurisdiction—Preliminary order—Condition precedent.

The existence of a dispute likely to cause a breach of the peace is necessary to give jurisdiction to the Magistrate to pass an order under S. 145 (1) of the Cr. P. Code. The fact that the complaint shows that the complainant was out of possession of the property in dispute for over two months does not vitiate the proceedings under S. 145. (Kotwal, O. A. J. C.) Shesha Rao Nago Rao Patil v. Emperor.

AIR 1918 Nag 197 : 44 IC 972 : 19 Cr LJ 444.

——An order under S. 145 without any enquiry and when there is no evidence showing a likelihood of a breach of the peace, cannot be sustained. (Beadon, J.) Bogha v. Emperor.

6 PLR 1913 : 18 IC 890 : 1913 PWR Cr 2 : 14 Cr LJ 138.

30. Likely to cause a breach of the peace—
(c) Nature of breach of the peace contemplated.

——There must be present fear that it is possible that there would be breach of the peace.

Section 145, Criminal P. C., requires that there must be a present dispute, that there must be a likelihood of a breach of the peace. That is to say, there must be a present fear that it is probable that there will be a breach of the peace owing to the dispute unless proceedings are taken

CRIMINAL P. C. (V of 1898), S. 145 — 30. Likely to cause a breach of the peace — (c) Nature of breach of the peace contemplated

under the section. (Manohar Lall and Chatterji, JJ.) Shibnarayan Das v. Satyadeo Prasad.

AIR 1943 Pat 44 : 9 BR 73 : 15 RP 168 : 203 IC 275 : 44 Cr LJ 25.

——Fear of 'imminent' breach of peace, whether necessary.

Section 145, Criminal P. C., requires that there must be a present dispute, and that there must be a likelihood of the breach of the peace. Under the section there must be a present fear that it is probable that there will be a breach of the peace owing to the dispute, unless proceedings are taken under the section. But it does not require that there should be a fear of an 'imminent' or 'immediate' breach of the peace. (Lort Williams and S. K. Ghose, JJ.) Hari Charan De v. Sherali Talukdar.

AIR 1932 Cal 60 : Ind Rul (1932) Cal 203 : 35 CWN 1003 : 136 IC 475 : 33 Cr LJ 305 (2).

——The word 'likely' in S. 145 indicates some degree of futurity and may be treated as synonymous with 'probable'. (Zahhadur Rahim Zahid Suhrawardy and Costello, JJ.) Anadi Lal v. Sukh Chand.

AIR 1930 Cal 715 : 34 CWN 899 : 58 Cal 388 : Ind Rul (1931) Cal 226 : 129 IC 610 : 32 Cr LJ 398.

——Magistrate has no jurisdiction to initiate proceedings under S. 145 where the dispute between the parties is likely to cause breach of peace not at the time but only at some future date (e.g. 2 months hence). (Suhrawardy and Graham, JJ.) W. Stewart v. Hurbert Hughes.

AIR 1929 Cal 341 : 33 CWN 509 : 49 CLJ 394 : 118 IC 892 : 30 Cr LJ 977.

——An order under S. 145 can only be passed when there is a present danger of a breach of peace. In the absence of any finding that there is a likelihood of a breach of peace an order under S. 145 cannot be sustained. It is not enough for the Magistrate to merely say that the parties are "in a contesting mood". (Daniels, J. C.) Mannu Lal v. Harde Ram.

AIR 1925 Oudh 416 : 86 IC 1008 : 12 OLJ 256 : 2 OWN 220 : 29 OC 23 : 26 Cr LJ 944.

——S. 145 —Duties of Magistrate —Nature of the breach—Breach between the rival claimants not necessary.

For proceedings under this section it is enough if the breach is apprehended on account of the dispute in question and need not actually be between the rival claimants only. (Krishnan, J.) In re Medai Dhalavoy Tirumalayappa Mudaliar.

AIR 1918 Mad 1203 : 37 IC 524 : 18 Cr LJ 156.

——Breach of the peace—"Likely," meaning of—Probable or imminent.

Per Lucas, J.C. and Crouch, A.J.C., Pratt, A.J.C. contra: The term "likely" in S. 145, does not mean that the breach of the peace complained of must be "imminent" or "likely to happen immediately," but it merely indicates that there

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should be a probability or likelihood of a breach of the peace. (Lucas, Crouch, and Pratt, J. Cs.) Balmukand Jaganath v. Crown.

1 SLR 50 Cr : 8 Cr LJ 170.

——Likelihood of breach of peace.

For initiation of proceedings it is enough if there is likelihood of breach of the peace. It is not necessary that the breach of the peace should be imminent. (Rampini and Mookerjee, JJ.) Kulada Kinkar Roy v. Danesh Mir.

33 C 33 : 10 CWN 257 : 2 CLJ 271 : 2 Cr LJ 670.

——Where the proceedings show that there was no imminent danger of the breach of the peace, the proceedings are not justified. (Ameer Ali and Hindley, JJ.) Janu Manjhi v. Maniruddin.

3 CWN 590 : 1 Cr LJ 529.

30. Likely to cause a breach of the peace—

(d) Recording of fact of existence of likelihood of breach.

See also Note 44.—Preliminary order.

——S. 145 (3)—Object of.

The object of the affixture of the order of the Magistrate that there is apprehension of breach of peace in respect of a certain land is that persons who may be interested in it may appear and put in their statements with regard to the possession of the land. (A. Srinivasachari, J.) Abdullah v. Hanmanthappa.

AIR 1953 Hyd 286 : ILR (1953) Hyd 173 : 1953 Cr LJ 1862.

——Finding that there was apprehension of breach of peace given not on receipt of police report but subsequently but before taking evidence—It is procedural irregularity—Defect is curable—(Criminal P. C. (1898), S. 537). (Beg, J.) Nageshwar Singh v. State.

AIR 1953 All 471 : 1952 AWRHC 595 : 1953 ALW 39 : 1952 ALJ 441 : 1952 All Cr R 156 : 1953 Cr LJ 1056.

——S. 145 (1) —Finding as to existence of danger as to breach of peace—Necessity.

Section 145 cannot be brought into force at all until the Magistrate declares in writing that in his opinion a dispute exists which is likely to cause a breach of the peace.

There were two connected cases under Ss. 107 and 145. The Magistrate passed an order under S. 145 without considering the question whether there was any apprehension of a breach of the peace. But that question was considered in connection with the case under S. 107:

Held, that although the procedure adopted by the Magistrate was irregular, the circumstances justified action under S. 145. (Oak, J. C.) Rama v. State.

AIR 1950 Ajmer 65 : 51 Cr LJ 1279.

——Order under S. 144 rescinded — Proceedings under S. 145 started on same day— No statement

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in either as to likelihood of breach of peace — Magistrate possessing materials indicating such likelihood—Omission held was not fatal to proceedings and no ground for interfering in revision.

Where the order under S. 144 which was rescinded and the proceedings under S. 145 which were started on that very day did not contain any statement that there was a dispute about the properties which was likely to cause a breach of the peace, but there were materials before the Magistrate, who made enquiry under S. 145 and directed the lands to be put in possession of the party who was declared to be in possession, to indicate that a breach of the peace was likely:

Held that though the omission to make mention of those materials in the order itself was an irregularity in the procedure, it was not fatal to the proceedings and was not a ground for interfering in revision. (Kuppuswami Aiyar, J.) Swaminatha Pillai v. Raghvachariar.

AIR 1947 Mad 161 : 1946-2 MLJ 433 : 1946 MWN 733 : 231 IC 263 : 48 Cr LJ 730.

——Absence of finding as to danger of breach of peace—Order is ultra vires. (Bhide, J.) Emperor v. Sis Ram.

AIR 1930 Lah 895 : 12 Lah LJ 147 : 128 IC 313 : 1930 Cr C 991 : 15 AI Cr R 360 : 32 Cr LJ 139.

——S. 145 (1)—Notice to parties—Defective jurisdiction of Magistrate.

Where there is a dispute likely to cause a breach of the peace and the parties are aware of it, the Magistrate does not lose jurisdiction under S. 145 simply because the notice issued does not state that a dispute likely to cause a breach of the peace exists. (Bannerjee, J.) Ram Behari v. Muneshar.

AIR 1915 All 9 : 27 IC 848 : 16 Cr LJ 224.

——Breach of the peace —No finding—Non-Compliance with provisions of S. 145.

A non-compliance by a Magistrate in proceeding under S. 145, with the provisions mentioned therein, and his failure to find that the dispute is likely to occasion a breach of the peace will vitiate his order and it can be set aside in revision. (Shahdin, J.) Teku v. Buta Singh.

AIR 1915 Lah 404 : 9 PWR Cr 1915 : 92 PLR 1915 : 27 IC 766 : 16 Cr LJ 206.

31. Limitation for suit.

——Order under — Failure to sue within three years—Effect of: See Mysore Limitation Act 1911, S. 28 and Art. 47.

52 Mys HCR 90.

——Exclusive possession for 12 years by one of claimant co-sharers from the order under S. 145 in his favour amounts to adverse possession.

Order under S. 145—Failure to bring suit within time prescribed under Art. 47 by person against whom order is passed:

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Held, that his right to property is extinguished. (Iqbal Ahamad, J.) Jaidevi Kuari Mt. v. Dakshini Din.

AIR 1937 All 300 : (1937) ALJ 225 : 1937 AWR (HC) 235 : 9 RA 703 : 169 IC 125.

——Final order under S. 145 in respect of the whole of property—Suit for possession of an undivided share of the property :

Held, that Art. 47 was applicable and a joint possession could not be given. But as the title was not extinguished, plaintiff could sue for the partition of joint property. (Guha and Bartley, JJ.) Jogesh Chandra Khasnavish v. Suresh Chandra Namadas.

163 IC 370 : 39 CWN 853 : 9 RC 19.

——Limitation Act (IX of 1908), Sch. I, Art. 47—Dispute between trust and third parties —Order under S. 145—Whether binds trust.

The application of S. 145, Criminal P. C., does not depend upon whether the claim is made by a private owner or on behalf of a trust and if there is a bona fide dispute between a trust and a third person and the other conditions of the section are satisfied, there is no reason why it should not fall within the cognizance of the Magistrate under S. 145, nor is there any reason why to an order passed by a Magistrate in such a case Art. 47, Lim. Act, should not be applied. (Varadachariar and Stodart, JJ.) Jagathambal Anni v. Periathampi Nadar.

AIR 1936 Mad 188 : 8 RM 804 : 43 MLW 496 : 70 MLJ 441 : (1936) MWN 457 : 161 IC 234.

——The words "claiming under such person" mentioned in Art. 47 refer to those persons who claim from the person bound by the order under a title created subsequent to the order. Where the title was created prior to order under S. 145:

Held, that Art. 47, Lim. Act, was not applicable. (Mohamad Noor and Rowland, JJ.) Munga Lal v. Sagar Mal.

AIR 1936 Pat 629 : 15 Pat 481 : 17 PLT 726 : 3 BR 148 : 9 RP 271 : 166 IC 29.

——Proceedings under S. 145 decided in favour of defendant No. 2—Defandant No. 1 bringing suit for possession 3 years after—Decree—Plaintiff resisting possession— Resistance ineffectual— Suit by plaintiff for declaration of title and recovery of possession:

Held, that whatever title (if any) the plaintiff had to the property, was completely extinguished. (Fazl Ali and Rowland, JJ.) Nando Kahar v. Sri Bhup Narain Singh.

AIR 1935 Pat 164 : 1 BR 550 : 16 PLT 183 : 7 RP 670 : 14 Pat 424 : 155 IC 1094.

——Proceedings against father in possession on behalf of joint family —Order against father —Order is binding on his undivided son— Suit by son for possession of subject-matter of dispute brought more than three years from such order

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is barred under S. 47. (Odgers and Wallace, JJ.) Venkatasomaraju v. (Alluri) Varahalaraju.

AIR 1930 Mad 48 : 30 MLW 201 : 1929 MWN 518 : 122 IC 171 : 2 M Cr C 183 : 52 Mad 787 : 57 MLJ 228.

——Failure to file suit under O. 21, R. 103 or within three years of criminal Court's order refusing right to present possession and S. 145 does not bar the suit for redemption. (Macnair. A. J. C.) Linganna Naganna v. Ahmadshah.

AIR 1928 Nag 97 : 105 IC 427 : 23 NLR 164.

——It is not necessary for the plaintiff in whose favour an order under S. 145 has been passed to bring a suit within three years for recovery of possession of the property which was the subject-matter of the proceedings before the Magistrate as the possession of the forcible dispossessor is deemed to be the possession of the person forcibly dispossessed provided the forcible dispossession was within two months of the date of the preliminary order. (Devadoss, J.) Ismalsa Rowther v. Sadasiva Asari.

AIR 1927 Mad 304 : 1927 MWN 35 : 99 IC 532 : 38 MLT 217.

——Order without jurisdiction under S. 145.

Where a Magistrate passes an order as to the mode of possession, his order does not give a cause of action for a suit which, if not brought within the statutory period, makes that portion of the order binding between the parties, the order being without jurisdiction. The intention of the law of limitation is that if no suit is brought within the statutory period the remedy is lost and in case of an order of a competent Court it remains binding between the parties. (Suhrawardy and Graham, JJ.) Rahini Nandan Chaudhury v. Jadunandan Chaudhuri.

AIR 1926 Cal 1022 : 30 CWN 873 : 97 IC 73.

——In so far as a magistrate's order in proceedings under S. 145 limits the period within which a civil suit may be brought by any of the parties, an order in mutation proceedings does not affect the magistrate's order under S. 145 because an order in mutation proceedings is not a final decision as to ownership. (Kendall and Pullan, A. J. C.) (Rani) Abadi Begam v. Mirza Ahmad Mirza Beg.

AIR 1925 Oudh 190 : 11 OLJ 757 : 82 IC 691.

——Order passed against the father is binding on the sons.

An order under S. 145 was passed against A, the manager of the family of the plaintiffs, in favour of the defendants. A died, and the plaintiffs dispossessed the defendants forcibly. They were convicted and the defendants were put back in possession by the Criminal Court. The plaintiffs thereupon sued for a declaration that they were the owners in possession, held, that whether the order under S. 145 was passed against A in his personal capacity or as manager of the family,

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the plaintiffs are bound thereby and the suit is governed by Art. 47 of the Limitation Act; held further that the plaintiffs cannot claim to enlarge the time by framing the suit as one for declaration. (Ryves and Gokul Prasad, JJ.) Ram Sahai v. Binode Behari Ghose.

AIR 1923 All 151 : 71 IC 402 : 45 All 306 : 21 ALJ 102 : 4 LRA Civ 113.

——Effect of order—Order without jurisdiction—Suit for possession—Limitation.

Where a Criminal Court makes an order under S. 145 and awards possession of immoveable property but that order is found to be made without jurisdiction a suit to recover possession is governed by Art. 142 of the Lim. Act, and not by Art. 47. (Mookerjee, A. C. J. and Fletcher, J.) Bharat Chandra Deb v. Ram Sunder Choudary.

AIR 1920 Cal 820 : 60 IC 860.

——Suit by other claimants to receive possession —Limitation.

Where property is attached by a Magistrate under S. 146, Cr. P. C., in a dispute arising under S. 145 of the Code a suit to recover possession of the property filed more than 6 years since the Magistrate taking over possession will be barred. (Seshagiri Aiyar, J.) Vithoba Rao v. Narasingh Rao.

AIR 1917 Mad 453 : 4 LW 55 : 20 MLT 247 : (1916) 2 MWN 173 : 35 IC 507 : 17 Cr LJ 331.

32. Local inquiry and local inspection.

——Order under S. 145, Cr. P. Code, must be passed after discussion of the evidence. Prominent mention of Magistrate's inspection and also of the fact that in the course of his inspection he found hundreds of people in the place, who were all in favour of the second party, is no ground upon which possession may be found in favour of the second party. (Sen, J.) In the matter of Abdud Misser L. K. Jha and P. Jha v. Satruhan Das.

AIR 1927 Pat 301 : 102 IC 779 : 8 AI Cr R 251 : 8 PLT 755 : 28 Cr LJ 603.

——Local inquiry — Criminal P. C., S. 539B—The Section only embodies an already recognised rule in Calcutta High Court — Contravention of the rule will vitiate final order if party is prejudiced.

Section 539-B does not introduce any new principle for the Calcutta High Court had often laid down that a memorandum should be prepared, so that both sides to an enquiry or trial might know what the Magistrate during his enquiry had noticed or failed to notice.

Where the local enquiry was made in the presence of the petitioner's pleader who did not, however, ask the Magistrate to record a memorandum or to attach a memorandum to the record or to give him a copy. Held he could not be allowed to say that for this formal defect the proceedings should be set aside unless he could show that the Magistrate's omission had caused prejudice.

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(Walmsley and B. B. Ghose, JJ.) Forbes, W. R. T. v. Mahammad Ali Haider Khan.

AIR 1925 Cal 1246 : 53 Cal 46 : 42 CLJ 131 : 90 IC 308 : 26 Cr LJ 1524.

——Local inquiry— Evidence — Supplemented by observations — Results of local inspection not recorded —Order is bad.

Where it is urged that the Magistrate twice made local inspections and that without making any record of the result of his observations, he used his conversations at the time of his local inspections in the course of his judgment in substitution of and in order to supplement the evidence which has been recorded by him. Held: If the Magistrate has used his observations made at the time of local inspection both in substitution of and to supplement the evidence recorded by him, he had in fact. turned himself into a witness in the case and, further, if he has failed to record the result of his local inspections which would have given both parties a chance of challenging the correctness of his observations, the decision is vitiated. (Coutts, J.) Ramsunder v. Kesho Prasad.

AIR 1922 P 294 (1) : 81 IC 33 : 25 Cr LJ 545.

——Local inquiry —No other evidence —Order not valid—Validity.

Where a final order under S. 145 of the Code is based on a local enquiry of which no note or memorandum is made, held, the order was based on no evidence and must be set aside. (Teunon and Suhrawardy, JJ.) Gogan v. Karimaddi.

AIR 1921 Cal 272 : 25 CWN 1007 : 34 CLJ 127 : 65 IC 855 : 23 Cr LJ 199.

——Local inquiry — Order on the basis of local inspection, whether legal.

Where a Magistrate converted a proceeding under S. 145 into one under S. 144 and before the date fixed for the filing of statements paid a surprise visit and based his order on the impressions gathered during the local inspection, held, that local inspection would not be a legal substitute for evidence especially where the inquiry on the spot is ex parte and where the evidence in the case is practically ignored. (Jwala Prasad, J.) Ram Sahai Singh v. Dwarka Singh.

AIR 1920 Pat 749 : 1 Pat LT 569 : 61 IC 712 : 22 Cr LJ 424.

——Ss. 145 (4) and 439— Local inquiry— Defects in procedure — Refusal to take oral evidence — Revision—Interference.

The Magistrate inspected the locality and being of opinion that the inspection completely satisfied him as to the fact of actual possession of the disputed property, declined to take oral evidence and passed an order after discussing the documentary evidence, Held, the Magistrate acted without jurisdiction in refusing to take evidence and the High Court could set aside his order. 36 M 275, Ref; 31 M. 82, Rel. on. (Seshagiri Iyer and

CRIMINAL P. C. (V of 1898), S. 145 — 32. Local inquiry and local inspection

Moore, JJ.) Shri Manavedan Rajah v. Parapravan Naidu.

AIR 1920 Mad 566 : 38 MLJ 73 : 27 MLT 85 : (1920) MWN 133 : 11 LW 285 : 54 IC 254 : 21 Cr LJ 46.

——Ss. 145 (4) and 148 —Local inquiry—Order on local investigation without evidence.

In a proceeding under S. 145 the Magistrate on the application of both the parties held a local investigation and without taking any evidence made the final order, held, that the order was without jurisdiction. (Walmsley and Huda, JJ.) Sahadat Khan v. Taijaddi Sheikh.

AIR 1919 Cal 67 : 46 C 1056 : 23 CWN 750 : 52 IC 608 : 20 Cr LJ 688.

——Ss. 145 and 148 (1)—Local inquiry—Report — Delegation of inquiry—Opportunity to parties.

In a proceeding under S. 145 of the Cr P. Code if a local enquiry is directed to be made, the result of the local enquiry becomes a part of the proceeding and the party affected by it is entitled to be made acquainted with the result thereof and should be given an opportunity of the report. A Magistrate deputed to hold a local enquiry under S. 148 (1), Cr. P. Code, should hold the enquiry himself and should not pass it on to somebody else. (Prideaux, A. J. C.) Jaiwanti v. Ram Rao.

AIR 1918 Nag 136 : 48 IC 987 : 20 Cr LJ 107.

——Local inquiry — No rule that it must be made in every case.

There is no hard and fast rule of law, that in every case under S. 145 a local investigation must be held whether the parties desire it or not. (Teunon and Cuming, JJ.) Upendra Nath v. Prasanna Kumar.

AIR 1919 Cal 884 : 48 IC 497 : 20 Cr LJ 17.

——Ss. 145 and 148 (2) —Local inquiry—Evidence of person deputed to make a local inquiry.

In a case under S. 145 an application for time for filing written statements by the parties was rejected and the Magistrate decided the case on the report of the person deputed to make a local inquiry. The magistrate's action was legal. (Harington, C. J., and Coxe J.) Piziruddin Mollah v. Totajannessa Bibi.

19 IC 958 : 14 Cr LJ 302 (Cal).

——Decision entirely based on local enquiry by magistrate—Legality.

Where, in a proceeding under S. 145, the Magistrate discarded the evidence on record as unreliable and decided the case upon what he saw, heard and inferred at a local enquiry held by himself.

Held that the Magistrate had erred materially in his jurisdiction and his order should be set aside. (Pargiter and Woodroffe, JJ.) Lal Behari Shaha v. Bejoy Sankar Sikdar.

10 CWN 181 : 3 Cr LJ 193.

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33. Nature of proceedings.

(a) Applicability of Oaths Act.
(b) Applicability of S. 350.
(c) Dismissal for default.
See also Note 5.—"Attend his court".
(d) Transfer of magistrate.
(e) Transfer under S. 192.
(f) Transfer under S. 526.

33. Nature of proceedings.

——Ss. 145, 369 — "Judgment" — (Words and Phrases — Judgment) — Cri. Revn. No. 449 of 1950 (Orissa) Overruled.

An order under S. 145 (6), Criminal P. C. whether passed 'ex parte' or after hearing the parties is not a 'judgment' within the meaning of S. 369, Criminal P. C. (Narsimham, J.) Krushna Mohan v. Sudhakar Das.

AIR 1953 Orissa 281 : ILR (1953) Cut 311 : 19 Cut LT 330 : 1953 Cr LJ 1726.

——Application under —If institution of case.

A person making an application to the Magistrate to initiate proceedings under S. 145 does not institute a case but only informs the Magistrate. (P. L. Bhargava, J.) Mahadeo v. Mela Ram.

1951 AWR (HC) 483.

——Orders under — Whether partake nature of interim proceedings in Civil Court.

Orders under S. 145, Cr. P. C., relate essentially to the possession of land and partake something of the nature of interim proceedings in a Civil Court and the order itself partakes something of the nature of a decree, so that a judgment which relates to such orders is not necessary to be applied without some modification to ordinary criminal proceedings for offences leading to a conviction or an acquittal. (Davis J. C. and Dadiba C. Mehta, J.) Tahilram Tackchand v. Miral.

AIR 1938 Sind 132 : 11 RS 22 : ILR (1939) Kar 18 : 176 IC 549.

——"Cause of action" is a very unsuitable expression in connection with proceedings under S. 145, Criminal P. C. (Burn, J.) Mariasusai Udayan v. Mahamud Azizuddin Sahib.

AIR 1936 Mad 824 : 37 Cr LJ 953.

——Proceedings under S. 145 are quasi-civil proceedings. (C. C. Ghose and Cuming, JJ.) Bande Ali v. Rajaullah.

AIR 1925 Cal 263 : 76 IC 975 : 25 Cr LJ 303.

——Proceedings under—Nature of— Acquittal of one of the parties under S. 447, I. P. C.—No bar.

Proceedings under S. 145 do not constitute a trial and are not in the nature of a trial. They are in the nature of police proceedings in order to prevent the commission of offence, and the fact that there have been criminal charges brought by one or the other of the parties against each other so far from being a bar to action under Chap.

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XII, constitutes evidence which may possibly prove the danger of disputes which it is desired to prevent. The fact that one of the parties to a proceeding under S. 145, Cr. P. C., had already been prosecuted and acquitted under S. 147 of the I. P. C., is no bar to the proceedings. (Saunders, J. C.) Nga Chit v. Ngt Ya.

AIR 1918 Upp Bur 8 : 44 IC 741 : 3 UBR (1917) 33 : 19 Cr LJ 389.

33. Nature of proceedings—

(a) Applicability of Oaths Act.

——Ss. 10 and 11 Oaths Act are applicable to proceedings under Ss. 144 and 145. But obviously they are not applicable to criminal proceedings which are between Crown or Government and the accused unless these may be criminal proceedings between the complainant and the accused in certain circumstances. (Manohar Lall and Mahabir Prasad, JJ.) Julum v. Jainarain.

AIR 1951 Pat 370 : 28 Pat 441

33. Nature of proceedings —

(b) Applicability of S. 350.

——Applicability of provisions of S. 350 to inquiries under S. 145.

See ibid, S. 350.

11 Cr LJ 440 (Cal).

——Ss. 4 (1) (k), 145 and 350 —"Enquiry"—Proceeding under S. 145, whether "enquiry"—Proceedings under S. 145, part heard — Transfer of trying Magistrate—"Successor".

Under the code an "enquiry" means not only an enquiry into an offence but extends to enquiry into matters which are not offences. Proceedings, under S. 145, are inquiries within the meaning of the Code. When, in the course of a proceeding under S. 145, one Magistrate is transferred and another comes in his place, the latter, if of competent jurisdiction, can deal with the proceeding under S. 350. S. 350 ought to be construed with all reasonable liberality. (Sharfuddin and Coxe, JJ.) Alimohamed Khan v. Tarak Chandra Banerji.

13 CWN 420 : 1 Ind Cas 336 : 9 Cr LJ 278.

33. Nature of proceedings —

(c) Dismissal for default.

See also Note 5—"Attend his court".

——Application under S. 145 — Dismissal in default—Legality —Order, if will be set aside.

An application to a Magistrate to take cognizance of a dispute under S. 145 is neither a complaint nor can it be dismissed in default under any provision contained in Ss. 145 to 148. Such a dismissal is, therefore, an illegal order. Proceedings under S. 145 however provide only temporary relief; the ultimate relief must be obtained by the parties from a Civil Court. It is open to the applicant to go to Civil Court at once and get a decision in his favour. The applicant is,

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therefore, not at all aggrieved by the illegal order being passed and it will not be set aside simply because it is illegal. (Desai, J.) Safdari Begam v. Ashfag Hussain Khan.

AIR 1952 All 538 : 1950 ALJ 292 : 1950 AWR HC 367 : ILR (1951) 1 All 709 : 1952 Cr LJ 637.

33. Nature of proceedings —

(d) Transfer of magistrate.

——Order cannot be passed by a Magistrate after handing over charge.

Where a Magistrate who has tried a case under S. 145, Cr. P. Code, is transferred and hands over charge, he is incompetent to deliver the final order, having become functus officio at that time. (Newbould and Suhrawardy, JJ.) Jagat Bhandhu Saha v. Jagabandhu Saha Sardar.

AIR 1924 Cal 192 : 38 CLJ 201 : 76 IC 432 : 25 Cr LJ 192.

33. Nature of proceedings —

(e) Transfer under S. 192.

——Where a District Magistrate transferred a case under S. 145, Criminal P. C., to another Magistrate in another Sub-Division and the Magistrate to whom it was transferred included in the proceedings before him certain land outside his Sub-Division:

Held, that he had jurisdiction to do so. (Dhavle, J.) Rameshwar Pathak v. Baijnath Rai.

AIR 1935 Pat 436 : 16 PLT 576 : 2 BR 61 : 8 RP 257 : 159 IC 12 : 37 Cr LJ 55.

——Where a City Magistrate, on the presentation of a petition under S. 145, Criminal P. C., examined the petitioner on oath and ordered a Police enquiry to be made and on receipt of the report, transferred the case to another Magistrate as he was very busy:

Held, that he must be deemed to have taken cognizance of the case and the transfer was not invalid. (Mukerji, Actg. C. J., Young and King, JJ.) Kapoor Chand v. Suraj Prasad.

AIR 1933 All 264 : (1933) ALJ 188 : Ind Rul (1933) All 125 : 55 All 301 : 142 IC 537 : 34 Cr LJ 414 (F.B.).

——It is not illegal for a Magistrate to transfer the case when the parties are ready for trial and some have even filed written statements. 2 PLT 186, Dist. (Kulwant Sahay, J.) Ramjaria v. Piar Koeri.

AIR 1923 Pat 369 : 2 Pat LR Cr 6 : 4 PLT 308 : 73 IC 173 : 24 Cr LJ 557.

——Ss. 192 (2), 145— Transfer of case under S. 145 by subordinate magistrate. See Cr. P. C., S. 192.

9 Cr LJ 399 (Cal).

——Ss. 145 and 192 — Transfer of proceedings under S. 145 by District Magistrate.

The jurisdiction to make a final order, under S. 145 or S. 146 of the Code, is not personal to

CRIMINAL P. C. (V of 1898), S. 145 — 33 Nature of proceedings—(e) Transfer under S. 192

the Magistrate, who initiates the proceedings, and a District Magistrate can transfer a case to a Magistrate subordinate to him. The practice of transferring cases under Ch. XII of the Code by District Magistrates to Magistrates of the Ist class is common and there is nothing wrong in it. (Mitra and Holmwood, JJ.) Ram Kissare Roy v. Dwarak Nath Sen.

10 CWN 1095 : 4 Cr LJ 223.

——Proceeding under S. 145 is a criminal case and a magistrate has power to transfer it under Ss. 192 and 528 of the Code. (Rampini and Mookerjee, JJ.) Gurudas Nag v. Gaganendra Nath.

2 Cal LJ 614 : 3 Cr LJ 83.

33. Nature of proceedings—

(f) Transfer under S. 526.

——Although a "case" in Cl. 8, S. 523, includes a proceeding under S. 145, a party in a proceeding under S. 145, cannot apply for adjournment under Cl. (8), S. 526. (Mullick and Scroope, JJ.) Loka Mahton v. Kali Singh.

AIR 1927 Pat 351 : 106 IC 219 : 6 Pat 553 : 8 PLT 716 : 28 Cr LJ 1035.

——Section 526 does not empower a High Court to transfer proceedings under S. 145 of the Code as such proceedings cannot be described as a criminal case in which a person is accused of an offence. (Martineau, J.) Narain Singh v. Gandharv Raj.

AIR 1925 Lah 48 : 76 IC 868 : 25 Cr LJ 276.

——The fact that the trying Magistrate is believed to have made up his mind that there is no likelihood of a breach of peace is not a sufficient ground for transfer. If he forms any opinion on the question of possession which might hamper him in dealing with the evidence on that point, it might no doubt be proper ground for transferring the case. (Simpson, A. J. C.) Muhammad Naqi Khan v. Rahamat Unnisa.

AIR 1923 Oudh 161 : 76 IC 562 : 25 Cr LJ 194.

——Ss. 145 and 526—Transfer.

A proceeding under S. 145 of the Cr. P. Code is not a "Criminal Case" within S. 526 of the Cr. P. Code and an application for transfer of such a proceeding is therefore incompetent. (Fawcett, J. C., and Crouch, A. J. C.) Farid v. Piru.

AIR 1914 Sind 11 : 28 IC 105 : 8 SLR 215 : 16 Cr LJ 249.

——Ss. 145 and 526—"Criminal case"—Proceedings under S. 145 are "criminal cases" within the meaning of S. 526. (Greeven, J. C.) Sardar Karam Singh v. Hearsey.

11 OC 61 : 7 Cr LJ 423.

——Where a Magistrate has repeatedly endeavoured to dispose, by unauthorized executive action, of matters, which the law reserves for judicial determination, and he has been betrayed into many illegal and irregular acts, and some of a highly

CRIMINAL P. C. (V of 1898), S. 145 — 33. Nature of proceedings—(f) Transfer under S. 526

oppressive character, he disqualifies himself for the discharge of any judicial function, great or small, in any matter connected therewith, and the case should be transferred from his file or from the file of any Magistrate of his selection. (Wilson and Porter, JJ.) Gopinath Paryah v. Empress.

2 CLJ 555 : 10 CWN 82 : 3 Cr LJ 169.

34. Non-compliance with provisions of Section.

See also Notes 1, 7, 27, 30, 36, 40, 48 52, 55 and 56.

——Ss. 145 (1) and 537—Non-compliance with provision of S. 145 (1)—Effect.

Where in spite of the irregularity or omission complained of there has been substantial justice in the case S. 537 would permit the defect to be cured. Therefore, a party to a proceeding under S. 145, Criminal P. C., cannot avail himself of mere technical defects in procedure adopted by the Magistrate when they do not cause prejudice. (Misra, J.) Ambika Baksh Singh v. Bharosay.

AIR 1950 All 731 : 52 Cr LJ 1521.

——Ss. 145 (3) and 537.

Inquiry started before return of service to certain parties—No prejudice caused to parties—Proceedings not bad. (Varma, J.) Bibi Soghra v. Emperor.

AIR 1948 Pat 77 : 13 BR 390 : 229 IC 536 : 48 Cr LJ 440.

——In the face of the pronouncement of the Privy Council in Abdul Rahman v. Emperor (AIR 1927 PC 44 : 28 Cr LJ 259 : 100 Ind Cas 227 (PC)), it is no longer open to the Courts in India to hold that the mere fact that an imperative statutory rule of procedure has been broken is enough to vitiate the trial or proceeding. The Courts should consider the gravity of the irregularity or omission and whether it might have worked actual injustice to the accused. Omission to comply with S. 356 (1) in recording evidence is a mere irregularity curable under S. 537. (King, J.) Kallu v. Bashiruddin.

AIR 1931 All 3 : 53 All 172 : 32 Cr LJ 372.

——Mandatory provisions.

There is no universal rule that disobedience of a mandatory provision in a statute has the consequence of nullification of all proceedings irrespective of any question of prejudice. Whether a mandatory provision is imperative or only directory depends upon a consideration of various circumstances. AIR 1924 Cal 1035 Doubted. (Walmsley and B. B. Ghose, JJ.) U.R.T. Forbes v. Mahammad Ali Haidar Khan.

AIR 1925 Cal 1246 : 90 IC 308 : 42 CLJ 131 : 53 Cal 46 : 26 Cr LJ 1524.

——Defect in procedure—Vitiating proceedings.

Once a magistrate is seized of jurisdiction he cannot be divested of it, by errors and omissions relating to mere procedure and not to jurisdiction in the absence of proof of prejudice to any

CRIMINAL P. C. (V of 1898), S. 145—34. Non-compliance with provisions of Section party. (Kennedy, J. C. and Rupchand Bilaram, A. J. Cs.) Mahomed Mahdishah of Pir Jhando v. Wahdalshah.

AIR 1926 Sind 53 : 89 IC 156 : 26 Cr LJ 1292.

——The result of the proceedings will not be invalidated by any and every error and radical defect must be established corrupting the whole proceedings before the magistrate's jurisdiction can be questioned. (Kendall and Pullan, A. J. Cs.) Rani Abadi Begam v. Mirza Ahmad Mirza Beg.

AIR 1925 Oudh 190 : 82 IC 601 : 11 OLJ 757.

——Revision.

Proceedings irregular —Magistrate acting without jurisdiction — Omission to serve or record order under S. 145 (1) is irregularity—Proceedings are liable to be set aside. (Chevis, J.) Kaku v. Harnaman.

AIR 1917 Lah 171 : 40 PR Cr 1917 : 18 Cr LJ 660.

——S. 145 (1)—Defects in procedure.

A Magistrate's order under S. 145 without complying with the requirements of Cl. (1) thereof is without jurisdiction and illegal 25 A. 537; 36 A 19, Ref. (Bannerji, J.) Autar Kurmi v. Emperor.

AIR 1914 All 107 : 24 IC 160 : 15 Cr LJ 424.

35. Non-joinder of parties, effect of.

See Note 1—Addition of parties.

36. Order under the section.

(a) Absence of enquiry under Sub-Section (4).
(b) Absence of final order.
(c) Finding as to existence of likelihood of breach of peace.
(d) Finding on question of possession.
(e) Form and contents.
(f) Improper orders.
(g) Nature of order.
(h) Order in respect of moveable property.
(i) Order in respect of part of subject-matter.
(j) Order in respect of property not included in proceeding.
(k) Specification of property.

36. Order under the Section.

——(a) Absence of enquiry under Sub-Section (4).

——Holding of an enquiry under Sub-S. (4) is a condition precedent to the making of the order under Sub-S. (6). An order under Sub-S. (6) cannot be made without having held an enquiry under Sub-S. (4). (Lobo, J. C. and O'Sullivan, J.) Muhammad Ali v. Shamsul Haq.

AIR 1940 Sind 33 : 41 Cr LJ 486.

36. Order under the section —

(b) Absence of final order.

——S. 145 (6)—Despite the fact that the preliminary order was passed an order under S. 145 CRIMINAL P. C. (V of 1898), S. 145 — 36. Order under the Section—(b) Absence of final order (6) should be passed. (Lakshmana Rao, J.) Vemuri v. Molli.

1939 MWN 336 : 49 MLW 473.

36. Order under the section —

(c) Finding as to existence of likelihood of breach of peace.

——Likely to cause breach of the peace.

Where the Magistrate has come to a conclusion that there is an apprehension of breach of the peace and thereafter calls upon the parties to file their respective claims, the law does not contemplate a further finding unless the Magistrate is satisfied that the conclusion arrived at by him in the first instance is not correct in which case he may vary his order and say that there is no apprehension of breach of the peace. Therefore, the fact that there is no subsequent finding that there is apprehension of breach of the peace does not make the order illegal. (Srinivasachari, J.) Abdullah v. Hanmanthappa.

AIR 1953 Hyd 286 : ILR (1953) Hyd 173 : 1953 Cr LJ 1862.

——Likelihood as to breach of peace—Finding as to, if should form part of final order.

If a Magistrate is satisfied as to the likelihood of a breach of the peace he has jurisdiction to make the preliminary order under S. 145 (1). There is nothing in S. 145 which requires the Magistrate in the course of the subsequent enquiry to record evidence on the question whether the dispute is or is not likely to cause a breach of the peace. The absence of such evidence on the record cannot be considered a sufficient reason for interfering with the final order. It is again not necessary for the Magistrate to embody an express finding in his final order to the effect that a breach of the peace was likely. (Ramlabhaya, J.) Madan Chandra v. Mukheswar Phukan.

AIR 1951 Assam 89 : ILR (1950) 2 Assam 419 : 52 Cr LJ 695.

——Absence of finding, in final order, that there is danger of breach of peace—Order under S. 145 is not justified.

The mere existence of a dispute between the parties does not justify the exercise of jurisdiction conferred by S. 145 on the criminal Courts. The only justification for an order by a criminal Court under S. 145 is the danger to the public peace. The settlement of disputes relating to property which are not likely to lead to a breach of the peace is within the exclusive jurisdiction of the civil Courts. The jurisdiction of the criminal Court cannot be invoked except on the ground of the likelihood of a breach of the peace.

Hence in the absence of a finding that there was a danger of the breach of the peace in the final order, an order under S. 145 is not justified. (Ram Labhaya, J.) Kohat Municipality v. Mt. Piari.

CRIMINAL P. C. (V of 1898), S. 145 — 36. Order under the Section — (c) Finding as to existence of likelihood of breach of peace

AIR 1947 Pesh 8 : 1947 OA Sup 65 : 1947 AWR Sup 65 : 48 Cr LJ 159.

——Magistrate stating in preliminary order that he was satisfied as to the likelihood of breach of the peace—Nothing to show that he altered his opinion —Final order, whether should also make mention of this.

Where the Magistrate had already stated in his preliminary order that he was satisfied that there was a likelihood of a breach of the peace and there is nothing in the final order to show that the circumstances or his opinion had altered, the fact that there is nothing to show in the final order that he was satisfied that there was a likelihood of a breach of the peace does not make the final order under S. 145, Criminal P. C., defective. (Gruer, J.) Sheoprasad Shriram v. Gonvindram Hardit Rai.

AIR 1940 Nag 265 : 1940 NLJ 375 : 13 RN 78 : 189 IC 774 : 41 Cr LJ 799.

——Finding as to the apprehension of a breach of the peace at the time of institution of proceeding is sufficient. In the final order recorded by the Magistrate with regard to the question of possession, it is not necessary that there should be any finding on the question of the breach of the peace. Absence of a finding on the question of forcible dispossession of the first party is not necessary, if it contains the finding as to the possession of the first party. (Edgley and Akram, JJ.) Goberdhan Dubey v. Khirod Chandra Banerjee.

71 CLJ 152 : 44 CWN 427.

——Ss. 145, 537 — Failure of Magistrate to make order under S. 145 (1) or failure to serve notice on opposite party or to affix copy of order to conspicuous place near land or to record finding in final order that danger of breach of peace exists, whether defects curable by S. 537—Whether vitiate proceedings under S. 145 when parties are not prejudiced.

Omission by Magistrate to make initial order as required by Sub-S. (1) of S. 145, Criminal P. C., failure to serve notice on the opposite party according to law, or failure to affix a copy of the order made by the Magistrate to some conspicuous place at or near the subject of dispute, and failure of the Magistrate to record a finding even in the final order that there was a danger of a breach of the peace about the land in dispute, are all defects which S. 537, Criminal P. C., can cure and are not, therefore, sufficient to vitiate proceedings under S. 145 when the parties are not in any manner prejudiced. (Din Muhammad, J.) Ratan v. Tika.

AIR 1939 Lah 233 : 41 PLR 188 : 12 RL 112 : 183 IC 351 : 40 Cr LJ 784.

——Finding in preliminary order that dispute is likely to cause breach of peace — Finding, if should be repeated in final order.

CRIMINAL P. C. (V of 1898), S. 145 — 36. Order under the Section — (c) Finding as to existence of likelihood of breach of peace

Where, in an inquiry under S. 145, Criminal P. C., the Magistrate, in his preliminary order, has specifically found that the dispute was likely to cause a breach of the peace, it is not necessary for the Magistrate to repeat in the final order, that such an apprehension existed. (Ram Lall, J.) Gurditta v. Taja.

AIR 1939 Lah 108 : ILR (1938) Lah 611 : 41 PLR 217 : 11 RL 741 : 181 IC 59 : 40 Cr LJ 519.

——The law does not require the Magistrate to record an express finding in his judgment that a breach of the peace was imminent. Such a finding in respect of the existence of a dispute likely to cause a breach of the peace is a matter to be considered in relation to the preliminary order. (Wazir Hasan, A. J. C.) Mt. Maqim-un-nissa v Mt. Ahmad-un-nissa.

AIR 1925 Oudh 605 : 90 IC 541 : 2 OWN 704 : 26 Cr LJ 1581.

——Breach of peace—Finding need not be recorded in final order.

The finding of breach of peace is necessary for the purpose of the preliminary order, when a Magistrate assumes jurisdiction, but once he is satisfied that there is an apprehension that peace will be broken, it is unnecessary that he should record a finding to that effect again when passing his final order. (Abdul Quadir, J.) Ganga Ram v. Murad Shah.

AIR 1923 Lah 253 : 73 IC 519 : 24 Cr LJ 631.

——Duty of Magistrate— Finding as to dispute, whether necessary in the final order.

Section 145 does not require the Magistrate to give in his final order, a finding that there is a likelihood of a breach of the peace. After he has made an order in writing under Sub-Section (1) the only matter which he has to determine is the question of the possession of the disputed property. (Martineau, J.) Jhando Ram v. Topan Ram.

AIR 1922 Lah 454 : 67 IC 584 : 4 UPLR (Lah) 82 : 23 Cr LJ 424.

36. Order under the section.—

(d) Finding on question of possession.

——Final order under S. 145 (b) should state the party which was in possession on the crucial date. (Krishnan Pandalai, J.) Mutyalamma v. Veeranna.

1931 MWN 1317.

——Main order is to be based on possession at the date of the preliminary order. (Gruer, J.) Emperor v. Sunderlal.

AIR 1930 Nag 271 : ILR (1937) Nag 174 : 38 Cr LJ 375.

——A final order under S. 145 is bad if it does not contain a finding of the fact of actual possession. (Imam and Chapman, JJ.) Gaizuddin Howladar v. Amuddi Howladar.

AIR 1914 Cal 753 : 18 CWN 94 : 15 Cr LJ 79.

CRIMINAL P. C. (V of 1898), S. 145—36. Order under the section—(d) Finding on question of possession

——Order under—Contents of.

An order under S. 145 (4), should embody a clear finding as to which of the parties was in possession at the date of the order under S. 145 (4). It is not enough to find who was in possession a year before the date of the proceedings. (Munro, J.) Mundlamuny Ellamandu v. Gadipudi Chinnah Venkiah.

2 Ind Cas 159 : 9 Cr LJ 505.

36. Order under the section.—

(e) Form and contents.

——Where a Sub-Divisional Magistrate makes an order under S. 145 (1) and fills up form 22 in Sch. 5, it is necessary to send the proceedings back to him in order that he may write proper judgment. There is nothing in S. 145 to absolve a Magistrate from his ordinary duty of giving reasons for his decision. (Reilly, J.) Chellapathi Naidu v. Subba Naidu.

AIR 1928 Mad 1230 : 114 IC 625 : 52 Mad 241 : 28 MLW 664 : 1928 MWN 921 : 1 M Cr C 320 : 55 MLJ 693 : 30 Cr LJ 340.

——A proper judgment under S. 145 should state the case of both the parties and then leave alone the question of title. If there is any oral evidence on either side, there should be some discussion of it. (Allanson, J.) Hazari Gope v. Mt. Bibi Amna.

10 PLT 47 : 110 IC 580 : 29 Cr LJ 724.

——Where an order only contains a very brief statement of some of the facts of the case, does not discuss the evidence adduced by the parties, and states no reasons as to why the claim of actual possession by any particular person is true, such an order is not a decision as required by the law and must be set aside. (Mohiuddin, A. J. C.) Emperor v. Raghunath.

AIR 1928 Nag 255 : 107 IC 907 : 10 AI Cr R 2 : 29 Cr LJ 312.

——Magistrate must give reasons for his decision.

Per Buckland, J.—Whether Ss. 366 and 367 do cr do not apply to proceedings under S. 145, Magistrate must give a statement of the reasons for the decision sufficient to determine whether he has or has not complied with Sub-S. (4) of S. 145 and directed his mind to the consideration of the effect of the evidence adduced before him. To what extent a Magistrate should state the reasons cannot be laid down by a general rule, but provided he states the reasons so as to enable the High Court to appreciate and deal with the case in revision, a degree of brevity which would be out of place in a judgment to which S. 337. applies would not necessarily be open to objection.

Per Cuming, J.—The law does not require that the Court should give reasons for the decisions in a proceedings under Chap. 12. (Suhrawardy, Cuming and Buckland, JJ.) Ishan Chandra Samanta v. Hridoy Krishna Bose.

AIR 1925 Cal 1040 : 86 IC 979 : 41 CLJ 357 : 29 CWN 475 : 26 Cr LJ 915.

CRIMINAL P. C. (V of 1898), S. 145 — 36. Order under the section—(e) Form and contents

——Signature and official position of Magistrate.

The Magistrate should sign his name in full in a judicial order made under S. 145. He may also note his official position beneath his signature. (Rampini and Sharfuddin, JJ.) Nojem Mirdha v. Jamalali Khalifa.

12 CWN 771 : 8 Cr LJ 27.

36. Order under the section.—

(f) Improper orders.

——Magistrate cannot order one party only to abstain from doing any act—Proper order indicated. (Krishnan, J. C.) State of Vindhya Pradesh v. Ram Lakhan.

AIR 1953 V. P. 25 : 1953 Cr LJ 1198.

——Proceedings under, in respect of different lands—Magistrate's finding as to possession also relating to land admittedly in party's possession—Lands distinguishable and evidence of possession easily separable — Order only to the extent to which it relates to land in possession is liable to be vacated and not whole order.

Although an order under S. 145 which extends to lands outside the proceedings is bad as a whole it cannot be laid down as an absolute proposition of law that where the lands are distinguishable and the evidence of possession adduced in relation to them is also easily separable, they being of different character, the Magistrate's order with regard to the other lands of which possession has been found with the party and which has really come within the ambit of the proceedings will not be sustained. In such a case the Magistrate's finding of possession only with regard to the land of which the possession is found to be with the party is liable to be vacated and not the order as a whole: AIR 1939 Pat 565 and AIR 1923 Pat 528, Ref. (Ray, J.) Dulare Kumar v. Subans Kumar.

AIR 1947 Pat 175 : 1946 PWN 278 : 231 IC 90 : 13 BR 539 : 48 Cr LJ 683.

——Ss. 145, 147— Proceedings under S. 147, regarding dispute as to road—Order in form under S. 145 (6)—Held, no prejudice to opposite party.

Where in a proceeding under S. 147, Criminal P. C., regarding a certain road, it is found that the disputed portion of the road is the private road of one party, the appropriate order to be passed is a declaration that the road is not a public road and a prohibition directed against the opposite party going on the road. Where, instead of that, however, the Magistrate declares that the road is in the first party's possession and prohibits all disturbance of such possession until eviction in due course of law, the order is in form one under S. 145 (6), and there is no

CRIMINAL P. C. (V of 1898), S. 145 — 36. Order under the section—(f) Improper orders

prejudice to the opposite party. (Agarwala, J.) Dhansar Coal Co. v. Babu Lal Agarwala.

AIR 1938 Pat 133 (134) : 10 RP 436 : 4 BR 329 : 19 PLT 323 : 173 IC 750 : 39 Cr LJ 363 (2).

——Order declaring right of one party to be in possession and forbidding others from interfering with the possession is one under S. 145.

Where a Magistrate, on a police report being received that there was a dispute regarding a piece of land and breach of peace was apprehended, called for documentary evidence from the parties, heard arguments and passed an order declaring one party in possession and directing that if the other were to obstruct him, proceedings under S. 107 would be sarted and referred the parties to civil Court.

Held, that the Magistrate acted judicially and passed without jurisdiction an order which he could only pass under S. 145 and therefore it should be vacated. (Macpherson, J.) Harbans Narain Singh v. Mohammad Sayeed.

AIR 1926 Pat 51 : 90 IC 295 : 26 Cr LJ 1511.

——Power of Magistrate—Jurisdiction.

Directions under S. 145 by Magistrate after finding that there was no likelihood of breach of peace are without jurisdiction. (Ramesam, J.) Mahalakshmi v. Subbarayadu.

AIR 1923 Mad 472 (1) : 17 LW 429 : 74 IC 447 : 24 Cr L J 783.

——An order declaring certain person to be in possession of property in dispute on the happening of a contingency is not one under S. 146 but under S. 145. (Jwala Prasad, J.) Lachmi Ojha v. Birja Misser.

AIR 1921 Pat 173 : 1921 Pat HCC 110 : 2 Pat LT 168 : 63 IC 152 : 22 Cr LJ 616.

——Trees—Order—Form of.

Where in proceedings under S. 145 the Magistrate in addition to declaring that a certain tree is in the possession of one of the parties, directed that a passage be left in the wall for the purposes of tapping, it was held that the first portion of the order is valid and the second portion referring to the passage is ultra vires and without jurisdiction. (Roe and Jwala Prasad, JJ.) Jibhlal Mato v. Emperor.

AIR 1918 Pat 237 : 3 Pat LJ 316 : 45 IC 848 : 19 Cr LJ 656.

——Order bad in part.

Where an order under S. 145 is severable and the bad part can be severed from the good, the good part can be maintained. (Atkinson and Jwala Prasad, JJ.) Sundermal v. Jharilal.

AIR 1917 Pat 183 : 2 Pat LW 54 : 18 Cr LJ 756.

——Ss. 145 (4) and 146—Attachment—Order without evidence.

Where in a proceeding under S. 145, a Magistrate ordered a party not to obstruct without examining the parties or taking any evidence, held that the order was not final and if there was still

CRIMINAL P. C. (V of 1898), S. 145 — 36. Order under the section—(f) Improper orders

a danger of a breach of the peace, the Magistrate must complete the proceedings and make a proper order either under S. 145 or S. 146. (Heaton and Shah, JJ.) In re. Dyawappa v. Basgunda Patil.

AIR 1915 Bom 98 : 17 Bom LR 382 : 29 IC 66 : 16 Cr LJ 434.

——Ss. 145, 439— Duty of Magistrate— Revision — Possession —Removal of superstructure.

All that a Magistrate can do under S. 145 is to maintain possession after due enquiry in strict compliance with its provisions. He cannot remove any superstructure on the disputed land and is not concerned with the question of title. An order under S. 145 without any enquiry and when there is no evidence showing a likelihood of a breach of peace, cannot be sustained. (Beadon, J.) Bogha v. Emperor.

6 PLR 1913 : 2 PWR (Cr) 1913 : 18 IC 890 : 14 Cr LJ 138.

——Order not justified by S. 145.

The Magistrate in proceedings under S. 145 passed the following order:—"I further order that if any fruit has been gathered on any of the said lands attached by order of this Court the proceeds of such fruit, minus expenses shall be handed over to Arman Mea".

Held that there was no authority in S. 145 or any other provision of the Criminal P. C.. to justify such an order. (Rampini and Sharfuddin, JJ.) Arju Mea v. Arman Mea.

7 CLJ 369 : 7 Cr LJ 336.

36. Order under the section—

(g) Nature of order.

——Delivery of final order under S. 145 (6) in open court constitutes promulgation within S. 188 I. P. C. See Penal Code, S. 188.

AIR 1953 All 257 : 1953 Cr LJ 623.

——S. 145 (6)—Order under S. 145 (6) is not a judgment — Order under S. 145 (6) written by Magistrate, can be pronounced by his successor: (Govinda Menon, J.) Thikka Surya Rao v. Sirangu Sathiraju.

AIR 1948 Mad 510 : 49 Cr LJ 754.

36. Order under the section.—

(h) Order in respect of moveable property.

——S. 145 (4) — Immoveable property — Movable property — Possession of part of immoveable property directed to be given.

A Magistrate is not competent to pass any order in regard to moveable property though contained in immoveable property. (Piggott and Walsh, JJ.) Mahadei v. Beni Prasad.

AIR 1920 All 225 : 42 All 214 : 18 ALJ 171 : 55 IC 194 : 21 Cr LJ 242.

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36. Order under the section.—

(i) Order in respect of part of subject-matter.

——Criminal proceeding relating to whole village —Final order in respect of some lands only — Parties aware— No prejudice caused —Order held not illegal but at most irregular. (Narasimham, J.) Jalumuru Kamaraju v. Kenguva Suryanarayana.

AIR 1953 Orissa 99 : 18 Cut LT 207 : ILR (1951) Cut 576 : 1953 Cr LJ 737.

36. Order under the section.—

(j) Order in respect of property not included in proceeding.

——Order passed by Magistrate including land outside proceedings—Order, if proper.

Where in proceedings under S. 145, Criminal P. C., the Magistrate passes an order which includes lands outside the proceedings, he acts in excess of his jurisdiction and the order is liable to be set aside. The proper course for him is to confine his order to the plots mentioned in the proceedings. (Varma, J.) Kirpal Singh v. Hari Choudhury.

AIR 1939 Pat 565 : 12 RP 5 : 5 BR 710 : 182 IC 54 : 40 Cr LJ 629.

——Magistrate deciding question not raised in notice—Action, held, outside jurisdiction.

Where in proceedings under S. 145, Criminal P. C., the Magistrate decides questions not raised in the notice to the parties, the Magistrate exceeds his jurisdiction and his order must be set aside. (Thomas, J.) Tej Bhan Singh v. Jagdish Prasad Singh.

AIR 1936 Oudh 188 : 1935 OWN (CC) 373 : 9 RO 138 : 164 IC 1120 : 37 Cr LJ 1058.

——A Magistrate has no jurisdiction to pass an order in respect of a larger area of land than was included in the proceedings. AIR 1924 Pat 589, Foll. (Kinkhede, A. J. C.) Emperor v. Ganikhan.

AIR 1928 Nag 81 : 105 IC 449 : 9 AI Cr R 374 : 28 Cr LJ 929.

——A Magistrate has no jurisdiction to pass order in respect of land which was not referred to in the initiatory proceeding. (Adami and Foster, JJ.) Uttim Singh v. Jodhan Raia.

AIR 1924 Pat 589 : 92 IC 172 : 3 Pat 288 : 7 PLT 288 : 27 Cr LJ 220.

——Large area — Jurisdiction of Magistrate — Dispute concerning a limited area—Order affecting larger area—Legality of.

Where a Magistrate had dealt with a larger area of land than is included in the order drawn up in the case, he exceeds his jurisdiction and the whole order may be set aside, 7 C W N 558 followed. (Ross, J.) Sukhari Nonia v. Ram Khelawan Thakur.

AIR 1923 Pat 528 : 4 Pat LT 372 : 1 Pat LR 255 (Cr) : 72 IC 69 (2) : 24 Cr LJ 309 (2).

CRIMINAL P. C. (V of 1898), S. 145

36. Order under the section.—

(k) Specification of property.

——Dispute between two parties— Description of plots in possession of each member of one party not given in judgment but in schedule appended to it—Order is not bad. (Govinda Menon, J.) Munia Servai v. Thangaraya.

AIR 1949 Mad 226 : 1948 MWN 573 : 1948-2 MLJ 209 : 50 Cr LJ 253.

——Duty of Magistrate—Order—Contents of.

An order under S. 145 of the Code, where one of the parties is in possession of the disputed land, should specify the boundaries and show what land is covered by the order. (Beachcroft and Ghose, JJ.) Abdul Hamed v. Yasin Munshi.

AIR 1920 Cal 904 : 61 IC 513 : 22 Cr LJ 385.

37. "Or other information."

——Person complaining about being forcibly ousted from possession by other side and asking for attachment of property and for appointment of Receiver— Whether sufficient to invest Court with jurisdiction to proceed under S. 145.

When a person comes forward and complains about being forcibly ousted from possession by the other side and asks for attachment of the property and for the appointment of a Receiver and asks for action to be taken under S. 145, Criminal P. C., (which relates to land alone), there can be no reasonable doubt that he is setting forth all the necessary facts to invest the Court with jurisdiction to proceed under S. 145, (Bose, J.) Abdul Majid v. Mohammad Saheb Azizuddin.

AIR 1941 Nag 171 : 1941 NLJ 110 : 14 RN 37 : 195 IC 122 : 42 Cr LJ 675.

——Application setting forth facts of dispute and incident which might lead to breach of the peace, signed by party and Pleaders—Magistrate passing preliminary order believing the information— Application, if amounts to "other information".

Proceedings under S. 145, Criminal P. C., are quasi executive. The intention of the Legislature in not amending the term "other information" when it recently amended S. 145, seems to leave the term elastic and give the Magistrates widest possible latitude in such cases. There is no particular way of receiving information. A general information or an application by a party is enough.

Where, therefore, a long and detailed application which was signed by Pleaders and the applicant set out the history of the dispute and property, the subject-matter of the dispute, and gave particulars about the incidents which were likely to lead to a breach of the peace and the Magistrate passed a preliminary order believing the information:

CRIMINAL P. C. (V of 1893), S. 145—37. "Or other information"

Held, that the Magistrate acted not without jurisdiction. (Bose, A. J. C.) Madho Kunbi v. Tilak Singh.

AIR 1934 Nag 194 : 7 RN 73 : 151 IC 853 : 35 Cr LJ 1460.

——Applicant's statement on oath is sufficient to justify the magistrate in making an order under S. 145 (1). (Dunkley, J.) U. Pyinnya v. U. Vilatha.

AIR 1931 Rang 51 (2) : 32 Cr LJ 637 (1).

——A Magistrate is entitled to initiate proceedings, if he receives information from any source whatever that there is likelihood of a breach of the peace relating to possession of immovable property. (Kulwant Sahay, J.) Gouri Shankar v. The Collector of Muzafferpur.

AIR 1925 Pat 553 : 87 IC 421 : 6 PLT 215 : 3 Pat LR Cr 127 : 26 Cr LJ 965.

——The police report and personal talk to parties and personal inspection of the land in dispute are not grounds justifying an order under S. 145. (Kotwal, A. J. C.) Asaram v. Chotulal.

AIR 1921 Nag 100 : 22 Cr LJ 768.

——Information—Meaning of.

The word information is wide enough to cover the knowledge derived by a Magistrate by reading petitions filed in another proceeding by the parties exhibiting an imminence of breach of peace. It is not limited to any particular way in which the Magistrate's attention should be drawn. The word "information" is not used in any technical sense; it is used to include the knowledge of the magistrate derived by reading the petitions filed in the S. 144 case. (Sultan, Ahmed, J.) Thaman Mahton v. Thakuri Mahton.

AIR 1920 Pat 219 : 1 Pat LT 369 : 2 UPLB (Pat) 192 : 57 IC 449 : 21 Cr LJ 625.

——Jurisdiction of Magistrate.

Where proceedings were initiated under section 145, on the report of the Amildar acting on the Patel's report that there was a likelihood of breach of peace.

Held, this was quite sufficient to give jurisdiction to the Magistrate. (Nanjundayya O. C. J. and Chandrasekara Aiyar, J.) Venkatasubbiah Setty v. Hucha Setty.

12 MCCR 93 : 9 Cr LJ 335.

——Conditions for initiation of proceedings.

In order that a Magistrate may have jurisdiction to act under S. 145, he must be satisfied, from a Police report or other information, that a dispute likely to cause a breach of the peace exists, concerning any land etc. A mere petition from a Deputy Tahsildar in the employment of one of the interested parties, is not such information, on which the Magistrate can act, without receiving further corroborative evidence by some less interested person. (Davis and Moore, JJ.) Raja of Karwatnagar v. Lodd Govind Das.

29 M 561 : 16 MLJ 419 : 1 MLT 405 : 5 Cr LJ 91.

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38. **"Parties concerned in such dispute".**

——Parties to proceedings.

The enquiry under S. 145 must be restricted to parties concerned in the dispute although others may have a title to the land. The Court is concerned with the person in actual possession who is likely to create a breach of peace. It is not concerned with the question as to where the title of the land lies. Giving notice to all concerned and await their submissions would entail enormous delay and protraction in the proceedings and this would be against the very purpose for which S. 145 has been enacted.

Where, therefore, a son is in possession of the property, it is not necessary to issue notice to the father because his name happens to be mentioned as owner and proprietor of the land, and the fact that a notice was not taken out to the father does not vitiate the proceedings. (Srinivasachari, J.) Abdullah v. Hanmanthappa.

AIR 1953 Hyd 286 : ILR (1953) Hyd 173 : 1953 Cr LJ 1862.

——S. 145 (1)—Meaning.

The words "the parties concerned in such disputes" in S. 145 (1) must have been intended to extend to persons other than the actual disputants.

Where one C could have been, but was not, made a party to the proceeding and she was the mother-in-law of one of the parties to the proceeding and was represented by him as her mukhtyaram:

Held that failure to add C as a party to the proceedings was not a serious matter when she was not concerned in the dispute likely to cause breach of peace and it could not be a ground for interference by the High Court, as the question was one of procedure by which the jurisdiction of the Magistrate was not affected. (Chaturvedi, J.) Ratan Singh v. Raghubir Singh.

AIR 1952 Madh B 165 : 1952 Cr LJ 1449.

——Parties.

A person who had no claim to the lands in dispute is not a necessary party to the proceedings under S. 145. (Das, J.) Wazir Mahton v. Badri Mahton.

AIR 1950 Pat 372 : 1950 AWR Sup 77 : 51 Cr LJ 1365.

——Parties—Effect of order on person with notice of proceedings but not applying to be impleaded.

Where the zamindar who was claiming possession over plots in dispute through a person in actual possession, has notice of the proceedings, which notice can be presumed upon the attachment, but for some reason or the other no representation is made on his behalf and as a result he is not impleaded in the case, the proceedings are not invalid, if the person in actual possession is impleaded, though the interest of the zamindar cannot be affected by the order passed by the

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Magistrate: AIR 1934 All 853, Disting. (Agarwala, J.) Shankar v. Rex.

AIR 1950 All 274 : 1950 ALJ 209 : 1950 AWR 388 : 51 Cr LJ 769.

——Scope.

If during the progress of the enquiry under S. 145 the person who had moved the Magistrate to start the proceedings or the persons against whom the proceedings were initiated drop out and the persons really concerned in the dispute appear before the Magistrate the dispute would still be there and the Magistrate would have to make an order to prevent the same. It is not at all necessary to issue fresh order under S. 145 (1). (Bhargava, J.) Mt. Kulsumunnissa v. Rex.

AIR 1949 All 623 : ILR (1950) All 720 : 1949 AWR 553 : 50 Cr LJ 949.

——'Parties concerned' means not only persons actually disputing but includes persons concerned in claiming to be in possession—Order in favour of party not mentioned in original notice is valid.

The 'parties concerned' in S. 145 (1) may be persons who are not mentioned in the original notice. The term "parties concerned" in this sub-section should not be so narrowly construed as to mean only the persons actually disputing but should be extended to persons who are concerned in claiming to be in possession. In selecting the persons whom the Magistrate will require to attend his Court for the purpose of laying their claims before him, the Magistrate acts only upon the basis of the information conveyed to him. But so as to attract all persons or parties concerned, he has to affix a copy of the order to some conspicuous place at or near the subject of dispute. The purpose of the enquiry under S. 145 is to declare the possession of the party actually in possession; and as soon as a Magistrate decides to investigate under the section, sub-section (3) requires that the order must be duly notified. The reason is obvious, because it is possible that if the order is not notified on the spot and in manner provided by the Code, persons may collude to have an order passed as to possession of a property in favour of one or the other so as to deprive the persons actually in possession.

Consequently, persons whose names are not mentioned in the order under S. 145 (1) but, who, on the order being notified, appear and file written statement as being persons interested in the proceedings before the Magistrate become parties and an order passed in their favour is valid: 30 Cal. 155 (FB), Rel. on. (Varma, J.) Leela Singh v. B. P. Singh.

AIR 1946 Pat 389 : 27 PLT 484 : 1946 PWN 85 : 13 BR 8 : 227 IC 157 : 47 Cr LJ 1013.

——Dispute between tenant and sub-tenants — Superior landlord, if party.

Section 145, Criminal P. C., is concerned with persons in actual possession, the word 'actual' being used in contradistinction to constructive possession. Hence, in a dispute between a tenant and his sub-tenants, the superior landlord is not a party to the dispute within the meaning of S. 145. That does not, however, mean that he had no locus standi to present a petition under that section in respect of such a dispute as he is interested in the land and his tenants and there can be no legal objection to a Magistrate taking notice of a dispute merely because his attention has been drawn to the dispute by an absentee landlord. (Horwill, J.) Rajaram Das v. Duvvala Ramanna.

AIR 1942 Mad 534 (1) : 15 RM 350 : 55 MLW 297 (2) : (1942) 1 MLJ 592 : 1942 MWN 372 : 201 IC 477 : 43 Cr LJ 741.

——One set of co-sharer-landlords, whether can represent entire body in proceedings under S. 145.

In a case of co-sharer-landlords possession of one is the possession of all and one set is capable of representing the entire body in a proceeding under S. 145, Criminal P. C. (Agarwala, J.) Raja Gope v. Sukan Singh.

AIR 1939 Pat 353 : 12 RP 120 : 20 PLT 145 : 5 BR 894 : 183 IC 286 : 40 Cr LJ 749.

——Tenants in possession, if necessary parties to dispute under S. 145.

The essence of proceedings under S. 145, Criminal P. C., is the determination of the question as to who is in possession. Although a Magistrate is entitled to rescind a preliminary order under S. 145 if he is satisfied that no likelihood of a breach of the peace exists, but in discharging parties to the proceedings who claim to be in possession on the ground that they claim to be in possession as tenants only and are therefore, not necessary parties, the Magistrate is acting with great irregularity and in a manner not contemplated by the provisions of the section. He is, in fact, envisaging a decision on the question who has the right to possession, which is a matter for a Civil Court and not for a Criminal Court at all. To say that tenants in possession are not necessary parties is to preclude persons who claim to be in possession from giving evidence that they are in possession. (Grille, J.) Nagarmal Rudmal Agarwal v. Rudmal Gangabisan Agarwal.

AIR 1937 Nag 93 : 9 RN 188 : ILR (1937) Nag 288 : 167 IC 500 : 38 Cr LJ 395.

——Trust.

If there is a bona fide dispute between a trust and a third person and the other conditions of the section are fulfilled, the dispute falls within the cognizance of the magistrate under S. 145. (Varadachariar and Stodart, JJ.) Jagathambal Anni v. Periathambi Nadar.

AIR 1936 Mad 188 : 70 MLJ 441.

——Parties.

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Duty of Magistrate under S. 145 is to determine what parties are concerned in the dispute and who are in actual possession. He is not deprived of the jurisdiction under S. 145 though some parties only are in possession. 5 CWN 900 and 30 Cal. 155, Foll. (Findlay, O. J. C.) Narayan v. Chandrabaga.

AIR 1925 Nag 457 : 89 IC 153 : 26 Cr LJ 1289.

——Where a minor was made party to the order which was drawn up under Sub-S. (1) but no notice was served on him.

Held, though the minor was a proper party being interested in the dispute, he was not a necessary party especially as he would not be a party likely to cause a breach of the peace. (Macpherson, J.) Nandan Singh v. Siaram Singh

AIR 1926 Pat 67 : 7 PLT 156 : 89 IC 151 : 26 Cr LJ 1287.

——Power of Magistrate—Parties.

——In communal dispute the Magistrate may choose representatives.

In Cr. P. Code, there is no rule of procedure like the one contained in O. 1, R. 8 of the C. P. Code by which a representative suit may be brought or a representative defence may be set up in a case under S. 145, and therefore, in a dispute between two communities the Magistrate would be justified in choosing out who should be the right people to represent each community and after hearing whom he should either permit a community to do a certain thing or to prevent it from doing it till a Civil Court has decided upon the rights of parties. (Mukerji, J.) Nanhe Mal v. Jamil-ur-Rahman.

AIR 1925 All 316 : 86 IC 89 : 23 ALJ 41 : 6 LRA Cr 94 : 26 Cr LJ 683.

——Parties.

Although a person is not one of the parties to the dispute but is in possession of part of the land he is a necessary party to the proceedings and should be asked to file a written statement. Where this is not done and where the Magistrate's order does not specifically state that there is a danger of breach of the peace, the High Court on revision will interfere. (Dalal, J. C.) Ram Bhushan Das v. Ram Lakhan Sahu.

AIR 1925 Oudh 484 : 85 IC 918 : 26 Cr LJ 630.

——Proceedings are not ultra vires because some parties in possession are unlikely to cause breach of peace.

In S. 145 the words "parties concerned in such disputes" include all persons claiming to be in possession and merely because some of those parties are unlikely to cause a breach of the peace, the proceedings under the section are not without jurisdiction. The result of the proceedings will not be invalidated by any and every error and a radical defect must be established corrupting the whole proceedings before their jurisdiction can

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be questioned. (Kendall and Pullan, A. J. Cs.) (Rani) Abadi Begam v. Mirza Ahmud Mirza Beg.

AIR 1925 Oudh 190 : 82 IC 601 : 11 OLJ 757.

——The omission to implead a tenant in possession of a portion of the disputed land does not make the proceedings defective. (Ross, J.) Ramnarain Singh v. Dhonrai Gope.

AIR 1922 Pat 371 : 3 PLT 291 : 23 Cr LJ 125.

——Parties to the dispute — Servant on monthly wages.

The words "parties concerned in such a dispute" in S. 145 include persons interested in or claiming a right to the property in dispute. An order for possession against a servant engaged on monthly wages and in custody of the disputed property does not bind his successor or master. 21 C. 29; 18 M 51; 6 CLR 193; 31 C. 48; 21 C. 915; 25 C. 423: 32 C 287, Ref. (Spencer, J.) Nagoji Row v. Subbarayalu Naidu.

AIR 1917 Mad 742 : 5 LW 118 : 36 IC 876 : 18 Cr LJ 44.

——Parties interested.

For a person to be concerned in a dispute relating to the land, he need not be actually present near the land or have a notice of the proceeding when started. (Chitty and Walmsley, JJ.) Manmotha Nath v. Ganga Giri.

AIR 1917 Cal 173 : 20 CWN 978 : 17 Cr LJ 449.

——Dispute regarding collection of rent between Lakherajdar and Patnidar—Non-joinder of tenants.

Where all the plots were held by the tenants on a yearly rent of half the produce, and there was a dispute as to the right to collect rent between the Lekherajdar and the Patnidar and as regards to some plots there was a dispute as to what tenants were in possession:

Held that as regards the plots regarding which there was a dispute as to what tenants were in possession, the magistrate should not have made any order in the absence of tenants who might be very seriously prejudiced by an order in favour of one or the other of the parties to the proceedings. (Chitty and Beachcroft, JJ.) Haridas Samanta v. Abdul Matleb Mullick.

AIR 1916 Cal 727 : 19 CWN 959 : 16 Cr LJ 590.

——S. 145 (1) —Parties —Party claiming right of easement, whether to be impleaded.

A party who does not claim anything beyond the right to worship on one day in the year and the right to make due and proper preparation for the holding of that worship by erecting huts for the puja has a right of easement and not possession and hence he cannot be made a party to proceedings under S. 145. (Holmwood and Imam, JJ.) Manik Chandra v. Preo Nath Kuar.

17 CWN 205 : 17 CLJ 397 : 17 IC 533 : 13 Cr LJ 789.

——Parties—Necessary parties.

In an enquiry under S. 145, a receiver not in actual possession is not a necessary party. 30 C.

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593, Dis. (Ayling and Abdur Rahim, JJ.) Maddipoti Chinna v. Narayanaswami Naidu.

9 MLT 502 : 9 IC 1009 : 12 Cr LJ 185.

——'Persons concerned in such dispute'— Possession through Manager or Agent — Jurisdiction to make an order in favour of such manager or agent.

There is jurisdiction in the Court under S. 145, Criminal P. C., to make an order in favour of a person who claims to be in possession of the disputed land, as Agent to, or Manager for, the proprietors, when the actual proprietors are not residents within the Appellate Jurisdiction of the High Court. (1902) 7 CWN 208 Overruled (Francis W. Maclean, C. J., Banerjee, Harington, Pratt and Henderson, JJ.) Dhondhai Singh v. G. R. Follet.

31 Cal 49 : 7 CWN 825 : 1 Cr LJ 49 (FB).

39. Pendency of civil suit.

See Note 2.—Applicability and scope.

40. Persons bound by the order.

——Member of joint Hindu family— Hindu law — Joint family manager —Power to represent.

Where the leading member of the family is a party to the proceedings under S. 145, it must be taken that he was representing the entire family and all the members of the family are bound by the order of the Magistrate in the proceedings. (Sinha and Rai, JJ.) Pitambar Chaudhury v. Achoki Chaudhury.

AIR 1951 Patna 325 : 29 Pat 311.

——Proceedings under section initiated by husband ignoring the rights of the wife and in assertion of his own rights — Order made in the proceedings if binds the wife.

See Limitation Act (1908), Art. 47.

AIR 1950 All 693.

——Where in proceedings under S. 145, Criminal P. C., between the plaintiff and the defendant, the Magistrate declares the defendant to be in possession of the property in dispute, a suit by the plaintiff for possession of his share of the property falls under Art. 47. Lim. Act. (Almond. J. C.) Sharif Gul v. Said Gul.

AIR 1941 Pesh 65 : 14 R Pesh 30 : 196 IC 444 : 42 Cr LJ 872.

——Order passed against father claiming property on behalf of sons—Property subsequently mutated in name of sons — Application by sons under S. 145—Application, if barred by previous order.

Where an order is passed under S. 145, Criminal P. C., against the father who claimed property on behalf of his sons, but mutation of the property is subsequently made in the name of the sons and the sons apply under S. 145, the sons must be deemed to be parties to the previous proceedings and are bound by the order passed in such proceedings. Such an order is, therefore, a bar to the subsequent application by the sons under S. 145.

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(Zia-Ul-Hasan, J.) Munishwar Baksh Singh v. Gajju Singh.

177 IC 247 : 1938 OWN (CC) 828 : 11 RO 40 : 39 Cr LJ 868.

——S. 145 (6)—Order under S. 145 (6), if binding on whole world.

It cannot be argued that because Sub-S. (3) of S. 145, Criminal P. C., provides for local publication, therefore, the question of possession is set at rest once for all and the final order under Sub-S. (6) is binding on the whole world. (Dhavle, J.) Inderdeo Singh v. Kesho Singh.

AIR 1938 Pat 1 : 18 PLT 886 : 4 BR 211 : 10 RP 372 : 173 IC 107 : 39 Cr LJ 268.

——Proceedings under S. 145 and order against father—Sons, if bound.

The sons are bound by the proceedings taken and the order passed under S. 145, Criminal P. C., against the father. (Grille, J.) Thakurdas v. Narayan.

AIR 1936 Nag 192 (197) : ILR (1936) Nag 205 : 9 RN 144 : 166 IC 709 : 38 Cr LJ 307.

——Person not party is not bound by order passed by Magistrate.

A person who is not a party to the proceedings under S. 145 cannot be held to be a person bound by the order. (Hilton and Rangi Lal, JJ.) Maya Devi Mt. v. Diwan Chand.

AIR 1935 Lah 115.

——Party.

The binding character of an order passed under S. 145 is not under all circumstances to be confined to persons who were actually made parties to the proceedings but may under certain circumstances extend to persons other than the parties themselves. 11 Bom. L. R. 377, Rel. on.

Where a person was not only aware of proceedings under S. 145 but has acted in collusion with one party in order to deprive the other party of the fruits of their success in S. 145 case.

Held, that the order under S. 145 was binding on such person and any resistance to execution of the order will justify conviction under S. 188. (Pearson and Mallik, JJ.) Satya Charan De v. Emperor.

AIR 1930 Cal 63 : IR 1930 Cal 634 : 125 IC 858 : 33 CWN 1002 : 1930 Cr C 15 : 31 Cr LJ 945.

——In proceedings taken under S. 145 an adverse order passed against a Hindu father in possession of the property brought on behalf of the joint Hindu family is binding on his undivided sons though they were not parties to the proceedings. A suit, therefore, by such undivided sons for possession of the properties — subject-matter of the proceedings—brought more than three years on such order is barred under Art. 47. (Odgers and

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Wallace, JJ.) (Alluri) Venkatasomaraju v. (Alluri) Varahalaraju.

AIR 1930 Mad 48 : 122 IC 171 : 30 MLW 201 : 1929 MWN 518 : 2 M Cr C 183 : 52 Mad 787 : 57 MLJ 228.

——Order of Magistrate has reference to subject-matter of dispute than to parties concerned.

Intention of the legislature in enacting this provision is that the order made by the Magistrate should have reference rather to the subject-matter of the dispute than to the persons who are engaged therein, that is to say, that once the declaration has been made as regards possession of the land it is without using the word in strict technical sense binding upon all persons interested therein. 1 Pat LW 642; AIR 1922 Pat 210, Rel. on. (Wort, J.) Jainath Pati v. Ramlakhan.

AIR 1929 Pat 505 : 117 IC 643 : 10 PLT 689 : 1929 Cr C 265 : 30 Cr LJ 840.

——A party's son having no possession or title is not bound by order against his father. (Dass and Ross, JJ.) Satya Niranjan Chakravarty v. Sushila Bala Dasi.

AIR 1926 Pat 103 : 4 Pat 799 : 90 IC 513.

——Persons not parties to the proceedings are not bound by order under S. 145, which is not against them, and their remedy is not by application in revision against the order. (Baker, J. C.) Ramchandra v. Ganpat.

AIR 1925 Nag 448 : 87 IC 923 : 26 Cr LJ 1035.

——It is not the actual parties, but all parties who may have notice of the proceedings, that are bound by the order. (Chandavarkar and Heaton, JJ.) In re Nathubhai.

11 Bom LR 377 : 2 Ind Cas 517 : 10 Cr LJ 61.

41. Police report.

——Likely to cause a breach of peace.

Where the police report forming the basis of a Magistrate's preliminary order under S. 145 is more than 13 months before the preliminary order is passed, the preliminary order is without jurisdiction inasmuch as it is based upon no material that there was any likelihood of breach of the peace at the date when the preliminary order is passed. (Mohapatra, J.) Kshetromoni Panda v. Raghu Nath Patnaik.

AIR 1953 Orissa 255 : ILR (1953) Cut 333 : 19 Cut LT 139 : 1953 Cr LJ 1499.

——Weight of.

Ordinarily, a Police report is accepted in cases under S. 145, Criminal P. C., unless there is any reason to the contrary. If the Magistrate has any reason for preferring the statement of the complainant to the opinion of the Police after inquiry, it is incumbent on him to give reasons in his subsequent order for not accepting the opinion of the Police. When the Magistrate does not apply his mind to this question and does not even state in his preliminary order that he is satisfied that there is apprehension of a breach

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of the peace, an order under S. 145 cannot stand. (Bennett, J.) Bis Ram v. Kamta Prasad.

AIR 1945 Oudh 62 : 1944 OWN (CC) 479 : 1944 AWR (CC) 295.

——Order based on statement of petitioners made to Police and not on record—Petitioners not questioned about such statement— Order must be set aside.

Where an order under S. 145, Criminal P. C., is, to a large extent, based on statements alleged to have been made by the petitioners to the Sub-Inspector of Police which are not on record nor were the petitioners questioned about these statements, the order must be set aside. (Lakshmana Rao, J.) Raju v. Abdul Rahiman Sahib.

AIR 1941 Mad 751 (1) : 1941 MWN 578 : 54 MLW 392 (1) : 14 RM 429 : 198 IC 16 (1) : 43 Cr LJ 344.

——Magistrate relying on Police report which is on record—His reference to it, whether sufficient ground for preliminary order.

Where, while passing a preliminary order under S. 145, Criminal P. C., the Magistrate has relied on the Police report which is on the record, his reference to that constitutes sufficient ground for the order. Even if the source of information is not recorded, that would be an irregularity curable by S. 537, Criminal P. C. (Gruer, J.) Sheoprasad Shriram v. Govindram Hardit Rai.

AIR 1940 Nag 265 : 1940 NLJ 375 : 13 RN 78 : 189 IC 774 : 41 Cr LJ 799.

——Magistrate, when has jurisdiction to take action merely on Police report.

The question whether a Magistrate has jurisdiction to take action under S. 145, Criminal P. C., on a Police report depends upon what that Police report contains, and when a Police report sets out the subject-matter of dispute, the cause of dispute, its nature, the apprehension that unless action is taken the breach of the peace wil ensue then the report contains sufficient material for the Magistrate to act upon. (Davis, J. C. and Lobo, A. J. C.) Muhammad Araf v. Satramdas Sakhimal.

AIR 1936 Sind 143 : 9 RS 60 (2) : 164 IC 969 : 37 Cr LJ 1030.

——Police report must be result of their enquiry and not merely copy of reports received.

The Police report to a Magistrate suggesting initiation of proceedings under S. 145 is not and should not be confined to written reports which they themselves may have received. The Police themselves must inquire whether a breach of the peace is likely and state their grounds for their reason to do so and it is the result of their enquiry and not merely a copy of reports which they may have received that is to be communicated to the Magistrate. In such a case, however, it is not sufficient to refer to a Police report as giving information that a dispute likely to cause a

breach of the peace exists, without stating the Magistrate's satisfaction that the report is correct. The provisions of Sub-S. (1) of S. 145 must be observed and the making of a preliminary order should not be allowed to lapse into mere routine as if it were the filling up of a printed form. (Grille, J. C.) Emperor v. Munnu Lal.

AIR 1935 Nag 78 : 17 NLJ 231.

——The report of the Police is not binding on the Magistrate, who may, if he thinks proper, ignore it altogether. (Pandrang Row, J.) Molaka Talla v. Thayaramma.

1934 MWN 1285.

——Whether proceedings can be initiated on basis of old police report.

Held, that proceedings under S. 145 cannot be started on the basis of a police report more than three months old there being no likelihood of a breach of the peace when the Magistrate actually drew up the proceedings. 2 PLT 650, Appr. (Suhrawardy and Costello, JJ.) Anadi Lal Mukerjee v. Sukhchand Mandal.

AIR 1930 Cal 715 : 58 Cal 388 : 129 IC 610 : 34 CWN 899 : 1930 Cr C 1115 : 32 Cr LJ 398.

——Ss. 145, 147 — Use of Police report without examining officer, legality of.

Where the only use which a Magistrate makes of Police report is that contemplated by S. 147 (1), Criminal P. C., it is not necessary for him to call on the Police Officer to give evidence as to the correctness of the report. (Bennet, J.) Todar Mal v. Emperor.

AIR 1931 All 14 : (1930) ALJ 1437 : Ind Rul (1931) All 169 (2) : 53 All 215 : 129 IC 441 : 32 Cr LJ 309.

——Court is not confined to police report in starting proceedings, nor bound to rely on the whole of it.

Though it is the imminence of a breach of the peace as disclosed in the police report which creates jurisdiction under S. 145, it cannot be held that the Magistrate is confined within the four corners of the report. It is his duty from all the material before him to decide whether proceedings under S. 145 are necessary or not. And even if the Magistrate relies on the police report for starting proceedings under S. 145, he need not rely on the whole of it. The Magistrate is not bound to accept the version given by the police beyond what he requires for the support of his order under S. 145. AIR 1929 Cal. 341, Dist.; 3 PLJ 287; 28 All 406, Ref. (Suhrawardy and Graham, JJ.) Ahmed Ali v. Sabed Sardar.

AIR 1929 Cal 468 : 49 CLJ 428 : 33 CWN 858 : 119 IC 372 : 1929 Cr C 95 : 30 Cr LJ 1027.

——Word "shall" in S. 145 is mandatory— When police report discloses case under S. 145 Magistrate is bound to apply S. 145.

Where the Magistrate started proceeding under S. 144 upon a police report disclosing a bona fide

dispute as to the possession of a property likely to cause a breach of the peace.

Held, that the Magistrate was bound to proceed under S. 145 when the police report clearly showed that proceedings under S. 145 should be started as the word "shall" in S. 145 is mandatory. AIR 1922 Pat 435 (F. B.), Ref. (Jwala Prasad, J.) Gobind Ram v. Basantilal.

AIR 1929 Pat 46 : 114 IC 466 : 7 Pat 269 : 11 PLT 134 : 30 Cr LJ 302.

——Report of police and sketch submitted with it showing lands in possession of parties; these two alone cannot be used to found possession.

Where the Magistrate based his conclusions about possession on the police report and a sketch submitted with it showing the lands in possession of different parties.

Held that the use made of these documents was not a proper one. The only legitimate use to which the sketch and the report could be put was to treat them as the basis of the proceedings and as affording materials for determining the question of likelihood of a breach of the peace and of the identity of the subject-matter of the dispute and of the disputing parties. (Mukerjee and Roy, JJ.) Shashi Mukhi Choudrani v. Sarat Chandra.

AIR 1927 Cal 327 : 45 CLJ 537 : 31 CWN 310 : 100 IC 713 : 28 Cr LJ 329.

——Magistrate can make his own independent decision contrary to police report.

The Magistrate, in order to assume jurisdiction under S. 145 has to satisfy himself about the likelihood of a breach of the peace. He is to exercise his own judgment upon the materials placed before him, and to arrive at a conclusion as to whether upon the materials placed before him, there is a likelihood of a breach of the peace. He would not be justified in acting merely upon the expression of an opinion by the police. If in the proceeding so drawn up in the office a reference is made to the police report and to the petition of the second party, dated the 27th March, 1923, which documents stated that there was no likelihood of a breach of the peace that will not by itself take away the jurisdiction of the Magistrate to initiate proceedings under S. 145, if he was satisfied that there was a likelihood of a breach of the peace. Although the police might have reported that in their opinion there was no likelihood of a breach of the peace the Magistrate on considering the report is entitled to come to a different conclusion of his own to initiate proceedings if he thought it necessary to do so. 33 Cal 33, Appr. ;1 PLT 387, Dist. (Kulwant Sahay, J.) Ganga Bhishun Singh v. Rajo Chaudhuri.

AIR 1924 Pat 787 : 83 IC 693 : 5 PLT 252 : 1924 PHCC 83 : 26 Cr LJ 133.

——Magistrate can refuse to take action except on a report from the police.

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A Magistrate as a general rule may refuse to take action at all under S. 145 except when a report from the police is sent to him on the matter. Even when such report is sent to the Magistrate it should not be a mere forwarding of a report made to the police by one of the parties even though accompanied by a record of the inquiry made by a police officer in the same matter. But it must be definite statement of opinion by a responsible police officer to the effect that he apprehends that there will be a disturbance of the peace which is beyond his powers to prevent and that he therefore desires the exercise of the higher powers of the Magistrate to prevent it. When such report is not sent to the Magistrate the fact will almost be conclusive as an indication of the absence of any likelihood of the breach of the peace. (Hallifax, A. J. C.) Emperor v. Mt. Phutania.

AIR 1925 Nag 142 : 81 IC 933 : 25 Cr LJ 1109.

——Where there is no police report, the statements of interested parties ought to be received with great caution but if the Magistrate has reason to believe such statements, he does not act without jurisdiction in taking proceedings under this section. (Newbould and Suhrawardy, JJ.) Joyamal Singh v. Kanta Gope.

AIR 1924 Cal 444 : 72 IC 32 : 24 Cr LJ 304.

——S. 145 (1)—Foundation of jurisdiction.

Under S. 145 (1) a Magistrate cannot start proceedings in January upon the strength of a police report of previous September when he had no information whatever as to any likelihood of a breach of peace on the date when he drew up the proceedings even though on proper grounds. (Bucknill, J.) Chheddi Lall Marwari v. Mahabir Prasad Sukul.

AIR 1921 Pat 445 : 2 Pat LT 650 : 64 IC 507 : 23 Cr LJ 27.

——Preliminary order—Police report.

The police report and personal talk to parties and personal inspection of the land in dispute are not grounds justifying an order under S. 145. (Kotwal, A. J. C.) Asaram v. Chotulal.

AIR 1921 Nag 100 : 22 Cr LJ 768.

——Breach of the peace—Evidence—Police report.

Magistrate does not act without jurisdiction when he initiates proceedings under S. 145 of the Cr. P. Code upon a Police report that there is a dispute likely to cause a breach of the peace. (Jwala Prasad, J.) Isri Prasad Chowdhri v. Warasat Hussain.

AIR 1920 Pat 745 : 1 Pat LT 738 : 60 IC 61 : 22 Cr LJ 205.

——Police report not disclosing breach of peace.

Where the police report, the basis of proceedings under S. 145, Cr. P. Code did not disclose that there was any apprehension of the breach of the peace, the Magistrate's order is without jurisdiction. (Sultan Ahmad, J.) Ramsaroof Chowdhury v. Mussamat Darsano Koer.

AIR 1920 Pat 499 : 1 Pat LT 387 : 58 IC 252 : 21 Cr LJ 748.

——Value of police report—If admissible in evidence.

The police report, and the evidence contained therein is inadmissible in evidence about the factum of possession in a proceeding under S. 145, Cr. P. Code. It is useful simply for initiating the proceeding. (Jwala Prasad, J.) Kulbans Narain v. Ransidh Singh.

AIR 1920 Pat 483 : 1 PLT 501 : 58 IC 159 : 21 Cr LJ 735.

——Magistrate cannot be satisfied that a dispute likely to cause a breach of the peace exists, merely upon a police report. And if he acts merely on the police report his order is illegal. (Walsh, J.) Nathu Ram v. Emperor.

AIR 1917 All 262 : 15 ALJ 270 : 18 Cr LJ 557.

——The Police report that, though there was nothing to show that there was a likelihood of a breach of the peace, yet it was not impossible that there could be a breach of the peace, is not sufficient to institute a proceeding under S. 145. (Mitra and Ormond, JJ.) Maharaj Bahadur Singh v. Rajah Ranjit Singh Bahadur.

11 CWN 835 : 6 Cr LJ 36.

——Ss. 145, 146 and 435 — Revision.

When the police report on which the proceeding under S. 145 is based states in the vaguest terms that each of the parties claims a certain right, and that, inasmuch as both the parties are men of substance, there might be a breach of the peace. The High Court may interfere with an order of attachment under S. 146. (Mitra and Ormond, JJ.) Maharaja Surja Kanta Acharja Bahadur v. Maharaja Jagadindra Nath Roy Bahadur.

11 CWN 198 : 5 Cr LJ 32.

——Grounds for holding existence of likelihood of breach of the peace—Police report.

For the assumption of jurisdiction under S. 145, the Magistrate should be satisfied, either from a police report, or from other information that there is likelihood of a breach of the peace. He ought not to take action upon a mere expression of opinion by the police, but should have a statement of facts before him so that he may form his own opinion and be satisfied as to the necessity or otherwise for the initiation of proceedings under the section. A reference by the Magistrate in the initial order to a police report, which clearly sets out the likelihood of a breach of the peace, is a sufficient statement of the reasons for his being satisfied of the existence of a dispute likely to cause such breach of the peace. The police report, however, upon which the Magistrate bases his initial order, should contain a statement of facts from which the Magistrate may be satisfied of the existence of a likelihood of a breach of the peace. There is

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however, no inflexible rule that the police report must show that the disputing parties are actually assembling men or doing other specific overt acts. No rule can be laid down so as to specify the sufficiency of the materials upon which he takes action, but he must form his own judgment and not proceed upon a mere expression of opinion by the police. (Rampini and Mookerjee, JJ.) Kulada Kinkar Roy v. Danesh Mir.

33 C. 33 : 10 CWN 257 : 2 CLJ 271 : 2 Cr LJ 670.

42. Possession at the date of preliminary order.

See also Note 28.—Joint possession
and Note 33 (d)—Finding on question of possession.

——S. 145 (5)—Finding about existence of dispute.

Where the Magistrate decides the question of possession under S. 145 (4), it is not necessary for him at that stage to consider the question or to record a finding about the existence of any dispute likely to cause a breach of the peace unless it is asserted or attempted to be proved by any party or any person interested that no such dispute existed. (P. L. Bhargava, J.) Jain v. Sudhanshu Kumar.

AIR 1953 All 540 : 1953 ALJ 353 : 1953 Cr LJ 1266.

——Duty of Magistrate.

It is necessary in a case under S. 145 that every attempt should be made by the Magistrate, on a careful examination of the evidence produced by the parties, to find which party is in possession. It is not proper for a Magistrate to shirk his duty because he will have to take some pains in deciding this question. (Sharma, J.) Sher Khan v. Sagar.

1953 Raj LW 115.

——S. 145 (4)—Party A in actual possession on date of preliminary order — No allegation that Party B was wrongfully dispossessed within two months of order—Order dispossessing Party A.

Party A is admittedly in actual possession of the property in dispute when the preliminary order is passed and there is no allegation that party B who applied under S. 145, Criminal P. C., had been forcibly and wrongfully dispossessed within two months of the date of the order the Magistrate has no power to decide who should be in possession of the property in future and the order passed by him dispossessing Party A and restoring possession to Party B is not sustainable in law. (Harnam Singh, J.) Sita Ram v. The Crown.

AIR 1949 East Punj 398 : 51 PLR 301 : 51 Cr LJ 3.

——S. 145 (4) and (6)—Inquiry as to possession—Magistrate is concerned solely with actual possession at date of preliminary order— Magistrate is not concerned as to how possession was obtained or with right to possession—Magistrate cannot

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decide question of possession on no evidence at all or merely on written statements of parties. (Harnam Singh, J.) Gainda Lal v. Bishembar Nath.

AIR 1949 East Punj 231 : 50 Cr LJ 573.

——Dispute between two parties— Description of plots in possession of each member of one party not given in judgment but in schedule appended to it—Order is not bad.

Where there is a dispute between two parties and Magistrate in coming to the finding as to possession of each member of one party, has, instead of giving the description of the plots in the possession of each member in the body of the judgment appended a schedule to the judgment tabulating the area, definition and classification of the various plots in the possession of various members of that party, the finding as to possession is not irregular. (Govinda Menon, J.) Munia Servai v. Thangaraya Onturiyar.

AIR 1949 Mad 226 : 1948 MWN 573 : 1948-2 MLJ 209 : 50 Cr LJ 253.

——Possession of complainant.

In order to vest a criminal Court with jurisdiction under S. 145, it is necessary that the party complaining of disturbance of his possession which is likely to give rise to a breach of the peace, must show that he was in possession at the time he instituted his complaint or within two months of the initial order required to be passed under S. 145.

Where it is established that the complainant was out of possession of the property for a considerable time and that a certain construction on the property was in existence for at least six months before the date of filing the complaint an order directing the complainant to be put in possession of the completed construction is wrong and unsustainable. (Walford, J.) Lakhpat v. Mt. Maharana.

AIR 1947 Oudh 159 : 1947 OACC 40 : 1947 AW RCC 40 : 1947 OWN 139 : 230 IC 229.

——Material question for decision is question of possession at date of order under Sub-S. (1) — Magistrate is bound to uphold possession of party in possession on that date.

In a proceeding under S. 145, the material question for decision is the question of possession at the date of the order under Sub-S. (1) of S. 145. The Magistrate is bound to uphold the possession of the party who was in possession on that date. Where one of the parties who claims possession on the basis of a lease has not admitted that they have given up possession after the expiry of the lease, it would be obviously improper to drop proceedings or set aside the order of the Magistrate when the dispute between the parties still subsists on the ground that the lease is determined by efflux of time. (Manohar Lall and Das, JJ.) Bindhyachal Prasad v. Madho Singh.

AIR 1946 Pat 330 : 12 BR 290 : 25 Pat 19 : 222 IC 611 : 47 Cr LJ 328.

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——Dispute between two parties—Members of one party in possession under one title — Order of Magistrate upholding their possession is not bad merely because he did not consider separate possession of each member.

Where there is dispute between two parties over some land and the members of one party were in possession under one title and separate possession amongst them was a matter of private arrangement, the order of the Magistrate upholding their possession is not bad merely because he has not considered the separate possession of each particular member of the party or because some members of that party have died during some stage or other of the proceeding. (Manohar Lall and Das, JJ.) Bindhyachal Prasad v. Madho Singh.

AIR 1946 Pat 330 : 12 BR 290 : 25 Pat 19 : 222 IC 611 : 47 Cr LJ 328.

——Main order is to be based on possession at the date of preliminary order and the words used with reference to it are positive. (Gruer, J.) Emperor v. Sunderlal.

AIR 1936 Nag 271 : ILR (1937) Nag 174 : 38 Cr LJ 375.

——Magistrate has to decide the only point as to who was in actual possession at the date of preliminary order. He is not concerned whether such possession was wrongful or not. Actual possession is all that matters, of course, subject to proviso 1 to Sub-S. (4). He should not base his order on respective merits of the claims of the parties and thus arrogate to himself the functions of the civil court. (Grille, J. C.) Abdul Latif v. Mohd. Masud Khan.

AIR 1936 Nag 3 : 18 NLJ 100.

——Magistrate is bound to find who was in possession on the date of the preliminary order. (Wallace, J.) Kuppuswami Naicken v. Papa Naicken.

1932 MWN 72 (1).

——Period of possession.

Opposite party being admittedly in possession at date of order—S. 146 is inapplicable.

N applied under S. 145 for an order restoring him to possession of a house from which he had been dispossessed by G, five days before the date of the petition. G replied that he had been in possession of the house for many years and that there was no such dispute as was likely to bring about a breach of the peace. The Magistrate holding that the evidence of either party was untrustworthy held that it was impossible to decide on the evidence whether any or which of the parties was at the date of his preliminary order in possession of the house. He, however, took action under S. 146.

Held, that the portion of the order of the Magistrate where he stated that it was impossible to decide which party was in possession on the

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date of the preliminary order was wrong as admittedly G had been in possession since at least five days before the application by N. There was no necessity to decide as to who was in possession on the date of his order.

Held, further that it could have been competent for the Magistrate to take action under S. 146 had none of the parties been in possession at the date of the preliminary order if it could not be decided as to which of them was in possession at the date. But as G was in possession then S. 145 did not apply. The Magistrate could have also restored possession under S. 145 (6) to N if he could have held that he was in possession within two months next before the date of the preliminary order. (Addison, J.) Gurudas v. Narain Das.

AIR 1930 Lah 422 : IR 1930 Lah 769 : 126 IC 577 : 1930 Cr C 491 (2) : 31 Cr LJ 1075.

——Power of Magistrate—Future possession.

Sec. 145 relates simply to the fact of actual possession at the date of the preliminary order. No question of title can be taken into consideration, nor can any order be passed as regards future possession with reference to the actual possession at the date of the preliminary order. Where a Magistrate, in proceedings under S. 145 passed an order according to an agreement between the parties, for future possession.

Held, that the order regarding future possession on the strength of the agreement was wrong. (Staples, A. J. C.) Gangadhar v. Balakrishna.

AIR 1929 Nag 285 : 121 IC 47 : 1929 Cr C 459 : 31 Cr LJ 191.

——When one party is declared to be in possession the right of the tenants to be in possession was not disturbed.

Where a proceeding under S. 145 was drawn in respect of certain land, a portion of which was in possession of tenants who had attorned to some of the second party and where the Magistrate had declared the possession of the first party in respect of the whole of the disputed property.

Held, that in a summary proceeding of this kind the right of the tenants to be maintained in possession of the land of which they were in occupation was not affected and the order of the Magistrate was modified inasmuch as the lands in possession of the tenants were concerned the possession of the first party was declared through those tenants. (Suhrawardy and Graham, JJ.) Suruj Main v. Tullock.

AIR 1929 Cal 632 : 33 CWN 574 : 119 IC 31 : 1929 Cr C 344 : 30 Cr LJ 982.

——A failure to record an express finding as to possession and the consequent disregard of the express provisions of Cl. (1), S. 146, are very much to be deprecated. (Kolhatkar, A. J. C.) Jan Mahomad v. Jivan Khan.

AIR 1928 Nag 325 : 111 IC 445 : 11 AI Cr R 194 : 29 Cr LJ 861.

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——In proceedings under S. 145 it does matter that the Magistrate's order should be passed quickly and it does not matter if the finding in regard to possession is wrong. (Hallifax, A. J. C.) Ganpat Kunbi v. Dewaji.

10 AI Cr R 411 : 110 IC 228 : 29 Cr LJ 676.

——Magistrate can direct possession to party in peaceful possession until eviction by Court. Notwithstanding injunction in favour of party in forcible possession by Civil Court, after Magistrate's findings, the High Court in revision will not allow party in forcible possession to get advantage of his forcible possession. (Fawcett and Madgavkar, JJ.) Bai Jiba v. Chandulal.

AIR 1926 Bom 91 : 94 IC 709 : 27 Bom LR 1353 : 27 Cr LJ 661.

——Where the Magistrate failed to decide as to which party was in possession on the date of the preliminary order the High Court can in such circumstances interfere on the ground that the Magistrate has acted without jurisdiction. 16 Cr. L. J. 239; 7 Cr. L.R. 450 and 18 Mad. 41, Foll. (Venkatasubba Rao, J.) Periasubba v. Sinna Subbayya.

AIR 1923 Mad 142 : 69 IC 158 : 16 MLW 701 : 31 MLT 382 : 45 MLJ 56 : 23 Cr LJ 670.

——Joint possession —Dispute concerning land — Magistrate—Duty of —Co-sharers.

In case of an application under S. 145, Cr P. C., if the person alleges that he is in possession of the land in question the object of the proceeding ought to be to ascertain how far his allegation is correct, i.e., to decide whether or not he is or has been recently in actual possession. The mere fact that the Revenue Records show that the holding is joint is not sufficient to stop the enquiry contemplated by S. 145, Cr. P. C. It is incumbent on the Magistrate to examine the parties and to take evidence. S. 145, Cr. P. C., applies to a case where the dispute is between cosharers each claiming to be in possession of the disputed land to the exclusion of the others and Sub-Section (b) to S. 145 does not render that section inapplicable to a case in which the parties are jointly entitled to the land in question. (Broadway, J.) Malan v. Makhan Singh.

AIR 1922 Lah 348 : 2 L 372 : 66 IC 65 (2) : 23 Cr LJ 225.

——Duties of Magistrate.

The entry in the Register D of a Collectorate though not conclusive, yet may give rise to a presumption of legitimate possession. But the Magistrate is bound to see who is in the actual possession of the property in the proceedings under S. 145, in which one of the parties claims the property as the owner and not as a manager or servant. (Jwala Prasad, J.) Babulal Miser v. Manager, Bettiah Estate.

AIR 1920 Pat 717 : 1 Pat LT 588 : 58 IC 513 : 21 Cr LJ 785.

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——Finding as to.

Where the dispute between the parties was about the possession of the land in question on the date of the preliminary order and the Magistrate recorded a finding that possession was with one of the contesting parties, the possession so found refers to the date of the said preliminary order and the Magistrate's proceedings cannot be challenged for an error of jurisdiction. (Krishnan, J.) Krishnappa Naidu v. Alamelu Ahmad.

AIR 1917 Mad 610 : 5 LW 165 : 36 IC 855 : 18 Cr LJ 23.

——Failure to record finding as to which party was in possession at the date of preliminary order —There is failure to exercise jurisdiction. (Seshagiri, Iyer, J.) Marudanayakam Pillai v. Moshammanao Rowther.

AIR 1917 Mad 594 : 34 IC 329 : 17 Cr LJ 217.

——S. 145 (4)—Duty of Magistrate, to find possession.

Under S. 145 (4) a Magistrate should find as to who is in actual possession of the disputed property on the date of his order, not on any date anterior to that, although previous possession may be a guide to the finding of peaceful and actual possession on the date. (Spencer and Seshagiri Aiyar, JJ.) Thumbalaped Hampanna v. Parisi Gangamma.

AIR 1915 Mad 1176 : 27 IC 911 : 16 Cr LJ 239.

——Magistrate has to decide whether any or which of the parties was in possession at the date of the preliminary order. If upon perusal of written statement, he decides that the first party was an agent of the second party, he cannot merely on this finding refuse to decide the question of possession. (Ayling and Hannay, JJ.) Vaithianatha Aiyar v. Suppalu Ammal.

AIR 1915 Mad 748 : 1 LW 939 : 15 Cr LJ 708.

——An order without going into the question of possession is illegal. (Chamier, J.) Jhabbu v. Dalchand.

14 IC 760 : 13 Cr LJ 296 (Patna).

——Omission to decide question of possession.

The Magistrate tried a case under S. 145, as if it was a civil suit, framed several issues and discussed them at length, but did not deal with the question of possession except that in only one passage in his judgment he observed that the oral evidence as to actual possession was in favour of the second party, but in his final order declared the first party to be in possession in order to give effect to a certain order of the Settlement Department: Held, that the Magistrate's order was without jurisdiction. (Rampini and Sharfuddin, JJ.) Kochai Fakir v. Romesh Chandra Biswas.

35 C. 795 : 12 CWN 773 : 8 Cr LJ 28.

43. Power to adjourn enquiry.

——Failure to produce evidence— AIR 1919 Pat 37, Dissented from—(Evidence Act (1872), Ss. 101 to 103.)

CRIMINAL P. C. (V of 1898), S. 145 — 43. Power to adjourn enquiry

Party given repeated dates for producing evidence to establish allegations about possession and likelihood of breach of peace— Failure— Magistrate can dismiss his application. (Chunder, J.) Ram Chandra Shahu v. Madhab Nayek.

AIR 1953 Cal 484 : 1953 Cr LJ 1153

——Where a Magistrate refused to grant an adjournment for enabling a party to file a sale-deed in a proceeding under S. 145 in which the dispute had reached a stage so critical that a breach of the peace was immediately to be apprehended, and the case did not admit of procrastination:

Held, that the action of the Magistrate did not amount to an irregularity which would render his order liable to be set aside. (Ferrers, J. C. and Mehta, A. J. C.) Natho Khan v. Emperor.

AIR 1932 Sind 145 : 26 SLR 353 : 34 Cr LJ 216.

——It is highly desirable that once the hearing of a case under S. 145 is commenced and witnesses are examined, the hearing should go on from day to day until all the evidence is taken and argument is heard; then order should be passed as soon as possible. (Kulwant Sahay, J.) Sastu Sahu v. Mattuni Thakur.

AIR 1924 Pat 689 : 83 IC 665 : 1924 PHCC 231 : 3 Pat LR Cr 145 : 6 PLT 258 : 26 Cr LJ 105.

——Adjournment application — Refusal — Processes not issued — Effect — Delivery of possession by Civil Court—Chota Nagpur Tenancy Act, S. 14.

Where the Magistrate refused an application of the petitioner for adjournment based on the ground that witnesses were not present and that copies of papers were required, but he decided the case on the arguments of the pleaders and on such evidence as was adduced: Held, the legislature could hardly have contemplated an elaborate and protracted investigation, the result of which might in many instances be to defeat the very object in view, namely, an effective prevention of a breach of the peace. It appears clear from the provisions of the Code that it is not obligatory upon the Magistrate to assist the parties to a proceeding under S. 145 to produce their witnesses and they cannot claim as a matter of right that processes should be issued by the Court to enable them to bring forward their evidence. (Ross, J.) Arjun Mahton v. Jugganath Singh.

AIR 1922 Pat 226 : 3 Pat LT 433 : 66 IC 419 : 23 Cr LJ 275.

——Time to produce evidence must be given.

An order refusing adjournment for production of documentary evidence regarding possession under S. 145 of the Code, is arbitrary and liable to be set aside. (Teunon and Ghose, JJ.) Biswambhar Roy v. Aminuddi.

25 CWN 602 : 33 CLJ 507 : 61 IC 63 : 22 Cr LJ 335.

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——Request for time for written statement — When to be granted.

When in a proceeding under S. 145 the land in dispute is attached and there is no immediate prospect of a breach of the peace, the Magistrate should not refuse to grant a reasonable request for time to file written statement and should not try the case ex parte. (Chitty and Smither JJ.) Romesh Chandra v. Aijuddi Shaikh.

AIR 1918 Cal 158 : 46 IC 719 : 19 Cr LJ 799.

——S. 145 (4) —Duty of Magistrate—Date originally fixed for hearing—Adjournment.

S. 145 (4) contemplates that on the date originally fixed, the magistrate should take all the evidence produced before him and decide then and there which of the party is in actual possession unless the court considers it necessary for good reasons to require further evidence. The court is not bound to exhaust the processes of the court to enforce the attendance of witnesses that did not appear. (Carnduff and Imam, JJ.) Hari Pada v. Sanyasi Charan Biswas.

17 CWN 144 : 17 CLJ 610 : 18 IC 264 : 14 Cr LJ 40.

——Postponement of case.

A proceeding under S. 145 of the Cr. P. Code can be postponed sine die, by the magistrate in view of there being the expectation of negotiations to settle the dispute commencing soon. (Sharfuddin and Coxe, JJ.) Guru Das Hazra v. G. L. Weatheral.

4 Ind Cas 537 : 13 CWN 601 : 11 Cr LJ 7.

——Postponing proceeding sine die.—A Magistrate has no jurisdiction to postpone sine die a proceeding under S. 145, while retaining under attachment the property covered by those proceedings, on the ground that the estate or area in which the land in dispute is situate is under settlement under the provisions of Reg. VII of 1822, when there is nothing whatever to show either that the Magistrate followed the instructions in S. 34 of the Regulation. (Brett and Ryves, JJ.) Abdul Rauf Mia v. Rahomuddin Bhuia.

13 CWN 104 : 8 LJ 564 : 9 Cr LJ 35.

44. Preliminary order.

See also Note 56—Statement of grounds in the preliminary order.

(a) Preliminary order, necessity of.
(b) Preliminary order, omission to record.
(c) Finding of existence of likelihood of breach of peace.
(d) Omission to record finding of existence of likelihood of breach of peace.
(e) Recording fact of satisfaction.

See also Note 26—"Is satisfied".

(f) Omission to record fact of satisfaction.
(g) Omission to record source of information.

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(h) Omission to direct parties to put in written statements.

(i) Misdescription of subject-matter.

(j) Delay in passing preliminary order.

44. Preliminary order—

(a) Preliminary order, necessity of.

——There must be preliminary order under S. 145 (1) for laying foundation for proceeding under S. 145. (Sharma, J.) Birisal Singh v. Matadin.

AIR 1953 Raj 119 : 1952 RLW 265 : ILR (1952) Raj 86 : 1953 Cr LJ 846.

——S. 145 (1)—Order under is essential.

Magistrate should be very careful in applying S. 145 and when they do apply this section it is their bounden duty to pass and promulgate an order under sub-cl. (1), S. 145 at the earliest moment. Any delay to promulgate an order under sub-cl. (1) might affect the merits of the case at a later stage and the legality thereof also may be questioned. (Shukla, J.) United State of Saurashtra v. Shah Mavji Pragji.

2 Sau LR 125.

——Likelihood of a breach of peace—Omission to record formal order as required by S. 145 (i)—Irregularity if curable under S. 537.

A Magistrate acquires jurisdiction to proceed under S. 145, only when there is a likelihood of a breach of peace. If there is material before a Magistrate upon which he feels satisfied that there is a likelihood of a breach of peace, an omission to record a formal order as required by S. 145 (i) may be treated as a mere irregularity which can be cured under S. 537, Cr. P. C.: AIR 1933 All 264 (FB), Rel. on. (Seth, J.) Mt. Ram Piari v. Dankha.

AIR 1949 All 402 : 1949 ALJ 16 : 1948 OWN 424 : 1949 AWRHC 79 : 50 Cr LJ 655.

——Defect in procedure—Absence of order.

Where the Magistrate did not make an order in writing as required by S. 145 (1).

Held, that S. 537 is sufficient to cure this defect. (Carr, J.) Mg. Po Lon v. Mg. Ba On.

AIR 1925 Rang 111 : 84 IC 548 : 3 Bur LJ 256 : 26 Cr LJ 324.

——Notice under S. 147—Objection that case did not fall under S. 147 — Objection not decided — Magistrate passing order under S. 145 without passing preliminary order — Order held without jurisdiction. (Munro and Sankaran Nair, JJ.) Subramaniya Pillai v. Sannasia Pillai.

6 MLT 103 : 19 MLJ 18 : 9 Cr LJ 565.

44. Preliminary order—

(b) Preliminary order, omission to record.

——S. 145 (1) — Omission to pass preliminary order — Effect.

Where the Magistrate acting under S. 145 omits to pass a preliminary order to the effect that he is satisfied that there is an apprehension of a breach of the peace, but if it appears from the record that there was material on which the Magistrate could be satisfied, the mere omission to pass an order under S. 145 (1) in explicit words does not vitiate the subsequent proceedings, or take away the jurisdiction of the Magistrate. (Ranadhir Singh, J.) Parmatma v. State.

AIR 1954 All 24 : 1953 AWRHC 468 : 1953 ALJ 601 : 1953 Cr LJ 1892.

——Ss. 145, 537—Omission to record preliminary order under S. 145 (1)—Effect.

A bare omission or irregularity in a matter of procedure (such as, an omission to record a preliminary order under S. 145 (1)) unaccompanied by any prejudice to the accused or failure of justice occasioned thereby would not operate to invalidate criminal proceedings if substantial justice has been done. The defect, if any, is deemed in such cases to be cured by the provisions of S. 537. (Misra, J.) Narsingh v. Suraj Kishore Devi.

AIR 1951 All 826 : 1951 ALJ 714 : 52 Cr LJ 1501.

——S. 145 (1)— Absence of preliminary order — Proceedings are illegal.

The essence of the proceedings under S. 145 is preliminary order under Sub-S. (1). When it is wanting the proceedings are illegal. (Sharma, J.) Bairon Bux v. Rajmal.

AIR 1952 Raj 100 : 1952 RLW 10 : 1952 Cr LJ 1031.

——Ss. 145 (1) and S. 537— Omission to record preliminary order—Magistrate not without jurisdiction — No prejudice caused by omission — Irregularity is cured under S. 537: AIR 1933 All 264 (FB), Foll. (Harish Chandra, J.) Khangar v. Jhamman.

AIR 1950 All 734 : 1950 AWR 640 : 1950 ALJ 692.

——S. 145 (1)— Where the Magistrate has substantially complied with S. 145 (1) and the order shows that the parties have in no way been prejudiced the omission to draw up a formal order in terms of Sub-S. (1) of S. 145 would not invalidate the order: AIR 1933 All 264, Rel. on. (Bind Basni Prasad, J.) Mrs. V. E. Argles v. Chhail Behari.

AIR 1949 All 230 : 50 Cr LJ 345.

——Jurisdiction — Failure to pass order under S. 145 (1) at any stage —No sufficient material on record to pass such order—Proceedings under S. 145 are without jurisdiction— Order attaching crops passed — Proper order in such case is to withdraw attachment and deliver crops to persons on whose land they were produced.

Normally criminal Courts cannot deal with cases of possession of immovable property. Section 145, however, gives them power to deal even with that class of cases but the condition precedent is that the Court should be satisfied that there exists an apprehension of a breach of the peace. It is only

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when there is an apprehension of a breach of the peace that the matter comes within the jurisdiction of the criminal Courts; otherwise the matter is one of a civil nature. Before, therefore, a criminal Court can be said to have any jurisdiction with regard to a case relating to the possession of immovable property, it must indicate that it is satisfied that an apprehension of a breach of the peace exists. That is why an order under S. 145, cl. (1) is to be passed before any further proceedings are taken. When the Court fails to pass such an order at any stage of the proceedings and there is not sufficient material on the record on the basis of which such an order can be passed, it cannot be held that the criminal Court had jurisdiction to take proceedings under S. 145. Where in such a case the Magistrate has attached the crops the proper order to be passed is to withdraw the attachment and direct the return of the crops to persons on whose land they were produced: AIR 1935 Oudh 316; AIR 1947 Oudh 159 and AIR 1945 Oudh 62, Rel. on.; AIR 1914 Lah 295; AIR 1926 Sind 85 and AIR 1918 Mad 1203, Disting.; AIR 1925 Mad 327, Ref. (Kidwai, J.) Abdul Aziz Khan v. Badri.

AIR 1948 Oudh 184 : 1947 OWNCC 619 : 1947 OACC 398 : 1947 AWRCC 398 : 49 Cr LJ 291 (2).

——S. 145 (1)—Absence of preliminary order under S. 145 (1), does not take away jurisdiction of Magistrate to proceed with matter further.

Mere omission to record preliminary order as required by S. 145 (1), however objectionable, is not sufficient to discharge the final order. The irregularity is cured by the provisions of S. 537, if it does not in fact occasion a failure of justice. Hence it cannot be said that the trial Magistrate has no jurisdiction to proceed with the matter in the absence of a preliminary order: AIR 1933 Pesh. 88, Foll. (Ram Labhaya J.) Kohat Municipality v. Mt. Piari.

AIR 1947 Pesh 8 : 228 IC 130 : 1947 AWR Sup 65 : 48 Cr LJ 159.

——Failure of magistrate to make initial order under S. 145 (1)—Parties not prejudiced— Defect is curable under S. 537 and proceedings are not vitiated. (Din Muhammad, J.) Ratan v. Tika.

AIR 1939 Lah 233 : 40 Cr LJ 784.

——S. 145 (1)—Proceedings are not bad for want of preliminary order under S. 145 (1), Criminal P. C., where, in fact, there is an order though it is not complete. (Currie, J.) Dalle v. Kehri Singh.

39 PLR 503.

——S. 145 (1), (6)— Preliminary order under S. 145 (1), necessity of — Want of objection by parties, effect of.

Unless there is a preliminary order under S. 145 (1), Criminal P. C., the Magistrate has no jurisdiction to pass any order under S. 145 (6) and the conduct of the parties in allowing the

CRIMINAL P. C. (V of 1898), S. 145—44. Preliminary order—(b) Preliminary order, omission to record

Magistrate to go on without objection, though reprehensible, cannot validate an order under S. 145 (6) which is without jurisdiction. (Burn, J.) Mariasusai Udayan v. Mahamud Azeazudeen Sahib.

AIR 1936 Mad 824 : (1936) MWN 647 : 44 MLW 305 : 71 MLJ 305 : 9 RM 158 : 164 IC 689 (2) : 37 Cr LJ 953.

——S. 145 (1), 537—Omission to record preliminary order under S. 145 (1)—Whether sufficient to discharge final order—Omission, if cured by S. 537.

Where a Magistrate, in proceedings under S. 145, Criminal P. C., omitted to make a preliminary order under S. 145 (1), but in final order he definitely stated that there was an apprehension of the breach of the peace:

Held, that the omission to record a preliminary order under S. 145 (1), however objectionable, was not sufficient to discharge the final order and that the omission was cured by S. 537, Criminal P. C. (Middleton, J. C. and Saduddin, A. J. C.) Mohan Lal v. Morni.

AIR 1933 Pesh 88 : 6 R Pesh 10 : 145 IC 868 : 34 Cr LJ 1138.

——Order under Cl. (1) — Grounds for setting aside order— Omission to draw up order under S. 145 (1), effect of.

Section 145 (1), Criminal P. C., is not mandatory at all, except in the sense that the Court will set aside an order passed under the latter clauses of S. 145 if there is any reason to believe that the omission of an order or the passing of an order not strictly in the terms of S. 145 (1) led to some prejudice to one or other of the parties.

It would be quite unjustifiable and unreasonable to set aside lengthy proceedings under S. 145 when the facts indicate that the parties could not conceivably have been prejudiced by the absence of a formal order, where it is manifest that they knew well all facts and contested the matter with the advantage of the knowledge of the whole of the facts.

The omission to draw up an order under S. 145 (1) has nothing to do with the question of jurisdiction at all. (Boys, J.) Madan Mohan Lal v. Sheoraj Kunwar.

AIR 1932 All 446 : (1932) ALJ 503 : Ind Rul (1933) All 63 : 141 IC 831 : 34 Cr LJ 156.

——Preliminary order must be passed under S. 145. (Willage, J.) Vasireddi Lingayya v. Adusumallu Nagayya.

1932 MWN 320.

——Order under S. 145 (1) must state the matters which that sub-section requires to be stated. (Krishnan Pandalai, J.) Yedewala Mutyalamma v. Gopisetti Veeranna.

1931 MWN 1317.

CRIMINAL P. C. (V of 1898), S. 145—44. Preliminary order—(b) Preliminary order, omission to record

——If the magistrate in the course of his order under S. 145 (1) directs that both the parties be restrained from entering the property and its compound until further orders, the order is ultra vires. (Dunkley, J.) U Pyinnya v. U Vilatha

AIR 1931 Rang 51 (2) : 32 Cr LJ 637 (1).

——Preliminary and final order.

The provisions of S. 145 (1) are mandatory and a disregard of those provisions vitiates the entire proceedings in the case. The Magistrate who has to draw up the order under S. 145 (1) is the Magistrate who after drawing up the order proceeds to decide the case. (Iqbal Ahmed, J.) Banka Singh v. Gokul.

AIR 1927 All 286 : 99 IC 1031 : 49 All 325 : 25 ALJ 246 : 8 LRA Cr 39 : 7 AI Cr R 267 : 28 Cr LJ 231.

——Proceedings without jurisdiction — Can be interfered with in revision.

The omission to pass an order under S. 145 (1) of the Criminal Procedure Code stating that the Magistrate is satisfied of the existence of a dispute likely to cause a breach of the peace is not a mere technical defect. Where the Magistrate has not made the initial order prescribed by that sub-section and has also not made at any subsequent stage of the proceedings an order which essentially complies with the requirements of that sub-section, the proceedings are without jurisdiction and cannot be regarded as proceedings under S. 145 of the Cr. P. Code. Accordingly S. 435 (3) of the Cr. P. Code does not preclude the High Court from entertaining an application for revision in such a case. (Martineau, J.) Hakam v. Ralia Ram.

AIR 1924 Lah 91 : 4 Lah 66 : 74 IC 79 : 24 Cr LJ 751.

——Ss. 145 (1) — Preliminary order — Essential to initiation of proceedings.

All proceedings purporting to be taken under Chap. XII without first making a formal order under S. 145 (1) are without jurisdiction and are therefore open to revision under S. 439 of the Code. (Kotwal, Offg. A. J. C.) Mahomed Hassam v. Mahomed Shami.

AIR 1919 Nag 160 : 49 IC 108 : 20 Cr LJ 124.

——Omission to pass preliminary order.

Mere omission to record preliminary order is not fatal defect unless prejudice is caused thereby. In order to give jurisdiction to a magistrate under the section, it is essential that he should be satisfied that a dispute likely to cause breach of the peace exists. (Shadilal J.) Sajad Hussain v. Nanak Chand.

AIR 1917 Lah 35 : 22 PWR Cr 1917 : 18 Cr LJ 461.

——Defects in procedure — Omission to record preliminary order to affix a copy of it—Jurisdiction.

CRIMINAL P. C. (V of 1898), S. 145—44. Preliminary order—(b) Preliminary order, omission to record

An omission to record a preliminary order or to affix a copy of it is not fatal to the jurisdiction of the court to proceed with the case under S. 145, where an order directing the filing of written statements has been recorded in the presence of parties and the parties have understood the nature of the proceedings. (Johnstone, J.) Mahommed Shariff v. Dhanpat Rai.

AIR 1914 Lah 295 : 15 PWR Cr 1914 : 68 PLR 1914 : 23 IC 487 : 15 Cr LJ 279.

——Failure to record order.

The failure by a Magistrate to record a preliminary order under S. 145 (1), Cr. P. C., does not destroy his jurisdiction to take action under the Code but is an irregularity only, cured by S. 537, Cr. P. C. (6 MIA 134 Expl., 25 M 61; 33 C. 352, 4 MLT 213, 16 MLT 146, 30 M 548 Ref. (Ayling and Napier, JJ.) Kamal Kutey v. Udayavarma Raja.

12 MLT 439 : 23 MLJ 499 : 1912 MWN 1154 : 36 Mad 275 : 17 IC 65 : 13 Cr LJ 753.

——Order under Sub-S. (1) is basis of jurisdiction.

An order under Sub-S. (1) is absolutely necessary for initiation of proceeding under S. 145. This gives jurisdiction absence of which renders the proceedings invalid. (Henderson and Geidt, JJ.) Banwari Lal Mukerjee v. Hriday Chakravarti.

32 C 552 : 1 CLJ 432 : 2 Cr LJ 347.

44. Preliminary order—

(c) Finding of existence of likelihood of breach of peace.

——A magistrate would have no jurisdiction unless he was satisfied that there existed a dispute concerning land etc., and which dispute is likely to induce a breach of the peace. A formal order to this effect under Sub-S. (1) is absolutely necessary to give the magistrate jurisdiction. (Abdul Raoof, J.) Dhani Ram v. Kali Ram.

AIR 1927 Lah 805 : 26 PLR 712 : 28 Cr LJ 973.

——A Court has no jurisdiction to take any action under the section without recording a preliminary finding as to dispute or to ignore the procedure under the section. (Pratt, J.) Nga Po Tin v. Nga Po Soung.

AIR 1923 Rang 211 : 74 IC 68 : 1 Rang 53 : 2 Bur LJ 32 : 24 Cr LJ 740.

——Likelihood of breach of the peace—Sufficient compliance with section — Revision against final order.

Where a preliminary order in a proceeding under S. 145 of the Cr. P. Code stated that the Magistrate had received a police report requesting such an order, that a complaint had been given at the police station and that the Magistrate believed there existed a danger of a breach of the peace, and eventually there was a breach of the peace, held that there was a sufficient compliance with the terms of S. 145 and that the

CRIMINAL P. C. (V of 1898), S. 145—44. Preliminary order — (c) Finding of existence of likelihood of breach of peace

final order in the case was not open to revision on the ground of such want of completeness in the order as might have been possible. (Richards, J.) Har Prasad v. Pandurang.

AWN 1905, 260 : 3 Cr LJ 48.

44. Preliminary order—

(d) Omission to record finding of existence of likelihood of breach of peace.

——S. 145 (1)—Where it is not stated in an order under S. 145 (1), Criminal P. C., that the Magistrate was satisfied from information that a dispute likely to cause a breach of the peace existed or that the parties concerned should attend his Court and put in their written statements regarding the fact of actual possession of the subject of disputes; but the notice signed by the Magistrate the same day shows that he was satisfied that a dispute likely to cause a breach of the peace existed and that at the top of the notice S. 145 was noted:

Held that under these circumstances the requirements of S. 145 (1) were fulfilled. (Case from Jaipur). (Sharma and Ibrahim, JJ.) Ram Charan v. Chhotelal.

1948 JLR 151.

——Notice defective—Effect.

Omission to mention in the notice under S. 145, Criminal P. C., that there was an apprehension of breach of peace is a mere irregularity when the parties must have known what the nature of the case was and the Magistrate clearly referred to there being a dispute about the land in his order and S. 107 of the Code which deals with an apprehension of the breach of the peace was also mentioned in the notice. (Varma C. J. and Bapna, J.) Bhura v. Har Sahai.

1947 JLR 254.

——S. 145 (1) —Failure of Magistrate to state in order of notice that there is danger of breach of peace—Proceedings, if vitiated.

Section 145 is enacted in order that a Magistrate may prevent a breach of the peace arising from a dispute as to immovable property. He has no jurisdiction in such a matter, which primarily appertains to a Civil Court, unless he is fully satisfied that there is a danger of a breach of the peace, and this must, therefore, be put in the forefront of his proceedings and he must give the parties notice that it is to prevent a breach of the peace that he is taking action under the section. If he fails to do so, the object of the Legislature in enacting the section is defeated and the proceedings will be vitiated and any order passed thereon should be set aside. (Pullan, J.) Emperor v. Hira Lal.

AIR 1933 All 96 : (1932) ALJ 1087 : Ind Rul (1933) All 151 : 142 IC 775 : 34 Cr LJ 449.

——Proceedings drawn up under Cl. (1) of S. 145 must be considered to be conclusive of the existence of a breach of the peace unless it were shown that the information upon which the proceeding is based does not in fact disclose any danger to a breach of the peace. (Jwala Prasad, J.) Mahadeo Dutt v. J. N. Sarkar.

CRIMINAL P. C. (V of 1898), S. 145—44. Preliminary Order — (d) Omission to record ..... breach of peace

AIR 1922 Pat 340 : 24 Cr LJ 263.

——Ss. 145 and 435 —Breach of the peace—Likelihood of—No finding as to—Revision.

Even though there is no express finding as to the likelihood of a breach of the peace in the order made by a Magistrate under S. 145 of the Cr. P. Code, yet where the notice shows that the Magistrate was satisfied that there was a serious dispute between the parties and in consequence he issued the notice and in the judgment it appeared that there was a quarrel between the parties with reference to the possession of several plots of lands, it could not be said that the proceedings were not proceedings contemplated by S. 145 of the Cr. P. Code. Consequently, the High Court should not interfere in revision. (Ryves, J.) Babua Singh v. Angnu Kewat.

AIR 1922 All 31 : LR 3 A 65 (Cr) : 66 IC 527 : 23 Cr LJ 303.

——S. 145 (1) (5)— Order without jurisdiction—Setting aside order.

The mere absence of a finding that there is likelihood of a breach of the peace does not justify interference by the High Court. Unless a party to such a proceeding can show that there was no likelihood, an order under S. 145 (1) cannot be set aside. (Beachcroft and Ghosh, JJ.) Ranada Ramjan v. Bharat Chandra.

AIR 1921 Cal 631 : 33 CLJ 69 : 25 CWN 215 : 62 IC 180 : 22 Cr LJ 484.

——Ss. 145 and 435, Cl. (3) — Defects in procedure —Omission to state likelihood of a breach of the peace—Revision—Power of the High Court.

Where proceedings are in intention, in form and in fact proceedings under Chap. XII of the Cr. P. Code by a Magistrate duly empowered to act under that chapter, the High Court has no power to send for those proceedings or to revise them. The mere omission by a Magistrate to state that he was satisfied from the police report that there was a likelihood of a breach of the peace is not a fatal defect. (Gokul Prasad, J.) Mussammat Har Piari v. Nathe Lal.

AIR 1920 All 227 : 18 ALJ 1140 : 2 UPLR (A) 428 : 59 IC 401 : LR 2 A 22 (Cr) : 22 Cr LJ 97.

44. Preliminary Order — (e) Recording fact of satisfaction.

See also Note 26 — "Is satisfied".

It is not sufficient to refer to a Police report as giving the information that a dispute likely to cause a breach of the peace exists, without stating the Magistrate's satisfaction that the report is correct, the provisions of sub-s. (1) must be observed and the making of a preliminary order

CRIMINAL P. C. (V of 1898), S. 145—44. Preliminary order—(e) Recording fact of satisfaction

should not be allowed to lapse into a mere routine as if it were the filling up of a printed form. (Grille, J. C.) Emperor v. Munnu Lal.

AIR 1935 Nag 78 : 17 NLJ 231.

——In his preliminary order, the Magistrate must state that he was satisfied that a dispute likely to cause a breach of the peace exists. Without this he will not get jurisdiction to initiate proceedings. (Ryves, J.) Dhanprasad v. Ganesh Pandey.

11 ALJ 696 : 20 IC 751 : 14 Cr LJ 495.

44. Preliminary order — (f) Omission to record fact of satisfaction.

——Likelihood of breach of peace—Satisfaction of Magistrate—Magistrate is not bound to state it in order. (Panchapakesa Ayyar, J.) In re Kanda Goundan.

1951 Mad WN 842.

When the Magistrate is satisfied regarding the likelihood of a breach of the peace, his omission to say so in his order is a mere omission to frame his order in accordance with law and as long as no failure of justice or prejudice to the accused has been occasioned, the omission is covered by S. 537, Criminal P. C., and cannot furnish a reason for setting aside the Magistrate's final order.

Per King, C. J.—Magistrates are not to understand that defects in procedure are of no importance. Slipshod procedure is to be condemned even though it does not necessarily result in vitiating the whole proceeding. (King, C. J., on difference of opinion between Srivastava and Nanavutty, JJ.) Asgari Khanam Bibi v. Emperor.

AIR 1935 Oudh 316 : 36 Cr LJ 656.

——Preliminary order—Omission to record the fact that the magistrate was satisfied that a dispute likely to cause a breach of the peace existed, does not deprive the magistrate of his jurisdiction to proceed with the case. Illegality is not such as is not curable under S. 537. (Mukerji, Actg. C. J., Young and King, JJ.) Kapoor Chand v. Suraj Prasad.

AIR 1933 All 264: 55 All 301: 34 Cr LJ 414 (FB)

——Ss. 145 and 435— Defects in procedure— Proceedings without jurisdiction—Breach of the peace —Preliminary order — Revision — Interference by High Court.

The omission to pass an order under S. 145 (1) of the Criminal Procedure Code stating that the Magistrate is satisfied of the existence of a dispute likely to cause breach of the peace is not a mere technical defect. Where the Magistrate has not made the initial order prescribed by that sub-section and has also not made at any subsequent stage of the proceedings an order which essentially complies with the requirements of that subsection, the proceedings are without jurisdiction and cannot be regarded as proceedings under S. 145 of the Criminal Procedure Code. Accordingly S. 435 (3) of the Criminal Procedure Code does not

CRIMINAL P. C. (V of 1898), S. 145—44. Preliminary order—(f) Omission to record fact of satisfaction

preclude the High Court from entertaining an application for revision in such a case. (Martineau, J.) Hakam v. Ralia Ram.

AIR 1924 Lah 91 : 4 Lah 66 : 74 IC 79 : 24 Cr LJ 751.

——Mere omission by the magistrate to state in the preliminary order that he was satisfied from the police report that there was a likelihood of a breach of the peace is not a fatal defect. (Gokul Prasad, J.) Mussammat Har Piari v. Nathe Lal.

AIR 1920 All 227 : 59 IC 401 : 18 ALJ 1140 : 22 Cr LJ 97.

44. Preliminary order—

(g) Omission to record source of information.

——Omission to mention source of information in preliminary order though known does not oust jurisdiction. (Dalal, J. C.) Sher Bahadur Singh v. Fazal Ali.

AIR 1925 Oudh 46 : 75 IC 736 : 25 Cr LJ 48.

44. Preliminary order—

(h) Omission to direct parties to put in written statements.

——S. 145 (1)— Preliminary order — Omission to direct parties to put in written statement—Effect.

A preliminary order under S. 145 (1) directed the parties to appear before the Magistrate on certain date but no direction was given to them to put in written statements of their claims in respect of actual possession of the subject matter in dispute:

Held that the rule in such cases is that where there is a preliminary order, the fact that it is not complete in some respects is not sufficient to vitiate the proceedings. (Harnam Singh, J.) Sita Ram v. The Crown.

AIR 1949 East Punj 398 : 51 PLR 301 : 51 Cr LJ 3.

44. Preliminary order—

(i) Misdescription of subject-matter.

——S. 145 (1)— Preliminary order— Omission to clearly specify subject-matter of dispute—Effect.

Where the party who is alleged to have dispossessed the other party to a proceeding under S. 145 knows very well the subject-matter of the dispute, an omission to clearly specify it in the preliminary order is only a minor defect of procedure and can be ignored. (Chaturvedi, J.) Ratan Singh v. Raghubir Singh.

AIR 1952 Madh B 165 : 1952 Cr LJ 1449.

44. Preliminary order—

(j) Delay in passing preliminary order.

——Preliminary order beyond two months of dispossession.

Provisions of S. 145 (4) proviso (1) that the Magistrate should make the order for possession in favour of the complaining party if he had been

CRIMINAL P. C. (V of 1898), S. 145—44. Preliminary order—(i) Delay in passing preliminary order forcibly and illegally dispossessed within two months before the date of the preliminary order, are mandatory. Consequently preliminary order passed beyond two months from the date of the alleged dispossession, is bad and would be vacated. (Sharma, J.) Bhairon Singh v. Nain Singh.

1952 RLW 441 : ILR (1952) 2 Raj 256.

——Inquiry under Sub-S. (1).

Sub-Section (1) of S. 145 does not contemplate any sustained inquiry before the making of the preliminary order. It is in the highest degree absurd for a Magistrate to delay the passing of a preliminary order while he undertakes a prolonged inquiry extending over several hearings. (Lobo, J. C. and O'Sullivan, J.) Muhammad Ali v. Shamsul Haq.

AIR 1940 Sind 33 : ILR (1940) Kar 162 : 12 RS 255 : 187 IC 636 : 41 Cr LJ 486.

——Original application should not be sent to police — Magistrate must himself be satisfied as to likelihood of breach—Proceedings should not be dilatory.

The Magistrate must be alert, active and prompt. Where a party being wrongfully dispossessed moved the Magistrate to initiate proceedings under S. 145 and the Magistrate thinking fit to invite police report sent the application itself in original for enquiry and report to the police, and the police report reached the Magistrate after a considerable delay and he passed an order which did not fulfil the requirements of S. 145, Cr. P. Code.

Held, that the Magistrate failed to appreciate the true and proper scope of the application, and to pass orders according to law, but by his dilatory procedure, deprived the party dispossessed of the valuable right to claim benefit of the presumption of continuance of his possession for a space of two months next prior to the date of his preliminary order, and thus defeated the very object with which the legislature enacted Prov. 1, Sub-S. 4. (Kincaid, A. J. C.) Emperor v. Ganikhan.

AIR 1928 Nag 81 : 105 IC 449 : 9 AI Cr R 374 : 28 Cr LJ 929.

45. Prior decision of civil, criminal or Revenue Court.

(a) Decision of civil court.

(b) Decision of Revenue Court.

(c) Delivery of possession by Civil Court — Subsequent dispossession.

(d) Person in possession not party to suit.

(e) Prior order under S. 145, Criminal P. C. See Note 16—Effect of order under the section.

(f) Prior order under S. 522 Criminal P. C.

45. Prior decision of Civil, Criminal or Revenue Court.

(a) Decision of civil court.

——Duty of Court to maintain civil Court decrees.

CRIMINAL P. C. (V of 1898), S. 145—45. Prior decision of civil, criminal or revenue Court — (a) Decision of civil court

In a case where the petitioner after going to civil Courts several times and obtaining an order in his favour, is frustrated in his attempts to be in possession by the high handed action of the counter petitioners, it is the duty of the Magistrate to support the decisions of the civil Courts and see, as far as possible, that the decrees of the civil Courts are maintained by declaring the petitioner to be in possession of the property. Otherwise it would only amount to putting a premium upon the high handed and unlawful activities of the other side. (Somasundaram, J.) Havildar Venkatachallam v. Sappar Palayam.

AIR 1953 Mad 594 : 1953 MWN 147 : 1953-1 MLJ 336 : 1953 Cr LJ 1119.

——Effect of prior decree of Civil Court.

It is the duty of the Magistrate holding proceedings under S. 145 to maintain the rights of the parties when such rights have been declared by a competent Court within a time not remote from taking proceedings under the section. (Wali Ullah, J.) Mashin Uddin v. State.

AIR 1953 All 383 : 1953 ALJ 758 : 1953 Cr LJ 832.

——Civil Court's decision declaring person's title and confirming possession — Magistrate cannot hold otherwise, only two days after decree.

Where the highest Civil Court declares the title of a person to a land and confirms his possession, the Magistrate cannot only two days after the decree, hold otherwise in a proceeding under S. 145, Cr. P. C., specially when no change in the situation and the circumstances has taken place since the filing of the civil suit. Proceedings under S. 145 are not of the nature of criminal proceedings properly so called, where the Criminal Court has to arrive at a finding independently of any decision of a Civil Court. (Nature of proceedings under S. 145 indicated. Case law Ref.) (Krishnan, J. C.) Indra Bahadur Singh v. State of V. P.

AIR 1952 Vind. Pra. 67 : 1952 Cr LJ 1514.

——If the question at issue between the parties has already been the subject-matter of a suit in the Civil Court, the Magistrate has no jurisdiction to institute the proceeding.

See ibid, S. 147.

AIR 1952 Pat 251 : 1952 Cr LJ 765.

——Ss. 145 and 107—Dispute relating to identity and possession of land comprised in sale-deed—Temporary injunction prohibiting vendee from entering on such land passed by civil Court — Magistrate has no jurisdiction to initiate proceedings under S. 145— In spite of injunction order, vendee threatening to do acts involving breaches of the peace—Appropriate action will be under S. 107. (S. Krishna Pillay, C. J.) Mathai v. Ninan.

1950 T-CLR 36 : 1949 KLT 126.

CRIMINAL P. C. (V of 1898), S. 145 — 45. Prior decision of civil, criminal or revenue Court — (a) Decision of civil Court

——Patni sale — Proceeding under S. 145—Court, if can go into question whether prior tenure holder continued in possession in spite of proclamation under S. 15 (2) of Bengal Patni Taluks Regulation.

When in proceedings under S. 145 a dispute arises whether or not the purchaser had taken possession of the disputed tenure under the proclamation in terms of S. 15 (2), Ben. Patni Taluks Regulation, it becomes essential for the Magistrate during the course of the proceedings under S. 145, Criminal P. C., to decide this point after finding whether the tenure has been created before or after the date on which the patni itself came into existence and the prior tenure holder continued in possession. (Edgley and Sen, JJ.) Usha Prova Dey v. Hriday Bashini.

AIR 1944 Cal 389 : ILR (1943) 2 Cal 436 : 46 Cr LJ 138.

——Question of title already decided by Civil Court—Proceedings under S. 145 are objectionable.

In a proceeding under the U. P. Encum. Estates Act, the Special Judge passed a decree and sent it to the Collector for execution informing the Collector of the nature and extent of the property which he found to be liable to attachment, sale or mortgage in satisfaction of the debts of the applicant. This property included the property in dispute. The opposite party did not object under S. 11, Encum. Estates Act but claimed to be in possession of the property in dispute:

Held, that as the question of title was already decided by the Special Judge, the opposite party was not entitled to agitate his claim. The proceedings under S. 145, Criminal P. C., were therefore, clearly objectionable. (Bennett, J.) Imtiaz Ali Khan v. Badruddin.

AIR 1943 Oudh 410 : 16 RO 90 : 1943 OWN (C C) 299 : 1943 AWR (CC) 81 : 19 Luck 300 : 208 IC 472 : 44 Cr LJ 789.

——Rights of the parties determined by competent Civil Court — Subsequent application under S. 145, Criminal P. C. — Magistrate should maintain the rights of the successful party and should not allow the defeated party to invoke the aid of the Criminal Courts. (Yorke, J.) Makhan Lal v. Mangal.

ILR (1943) All 150 : (1942) ALJ 629 : 1942 AWR (H C) 361.

——Decree of Civil Court declaring applicant to be in possession — Proceedings under S. 145 — Decision holding opposite party to be entitled to possession—Held, decision to be correct.

A lease of certain land was granted to the applicant for a year. For the next year, the land was leased to the opposite party as dissatisfaction was felt with the applicant who said that the land having been leased to him, he had entered into possession and that possession could not be taken away from him and, therefore, the Court

CRIMINAL P. C. (V of 1898), S. 145 — 45. Prior decision of civil, criminal or revenue Court — (a) Decision of civil Court

should not have found that the opposite party was in possession. Applicant tried to retain possession. A decree was passed in civil suit declaring the applicant to be tenant for the second year but it related only to a fraction of the land. The trial Magistrate declared the opposite party to be in possession under S. 145, Criminal P. C. :

Held, that the decision was correct and the actual physical possession had to be determined as otherwise a breach of the peace was likely to result, and that the Magistrate was not bound by the decision of the Civil Court. (Spargo, J.) China Tambi v. Virappa.

AIR 1937 Rang 202 : 10 R Rang 39 : 169 IC 939 : 38 Cr LJ 805.

——Delivery of possession in execution of warrant —Possession is at an end.

When a person knows that possession had been delivered in execution of a warrant obtained against him, his possession is at an end. (Grille, J.) Thakurdas v. Narayan.

AIR 1936 Nag 192 : ILR (1936) Nag 205 : 9 RN 144 : 166 IC 709 : 38 Cr LJ 307.

——Obiter — If the decree had been for delivery of possession followed by execution, the proof of formal delivery of possession might well be treated as conclusive proof in favour of the successful complainant but where there has been no execution, and all that exists is a simple declaratory decree, whether the opinion of the Munsif of this matter of possession should have any weight at all with a Criminal Court which has to decide the question of possession on the evidence before it, is doubtful. (James and Saunders, JJ.) Raghunath Singh v. Emperor.

AIR 1936 Pat 537 : 15 Pat 336 : 3 BR 30 : 17 PLT 526 : 9 RP 165 : 165 IC 289 : 37 Cr LJ 1126.

——Decree of civil court—Presumption.

The decree for confirmation of possession and for declaration of title cannot be regarded as conclusive proof that the decree-holder was in possession on the date of the decree. (31 Cr LJ 1005 : AIR 1930 Pat 162 Overruled). (James and Saunders, JJ.) Raghunath Singh v. Emperor.

AIR 1936 Pat 537 : 37 Cr LJ 1126.

——Ss. 145, 107—Previous order of Court in land registration case— Weight to be attached to it—Discretion of Magistrate — Interference with, if proper.

The likelihood of the breach of the peace is sufficient to give the Magistrate jurisdiction. The weight to be attached to a previous order of a Civil or Criminal Court is a question for the consideration of the Magistrate. Where, therefore, the Magistrate has jurisdiction to proceed under S. 145, Criminal P. C., there can be no interference with his discretion even if the matter might have been more suitably dealt with under S. 107. In such circumstances, however, the case ought not to be kept pending for the decision of the appli

CRIMINAL P. C. (V of 1898), S. 145 — 45. Prior decision of civil, criminal or revenue Court — (a) Decision of civil Court

cation for revision against the previous orders in a land registration case relating to the land in dispute. The Magistrate should proceed with the case and decide it without avoidable delay so that the property may be restored as soon as possible to the party which was in possession of it. He is bound to receive all such evidence as may be produced. (Saunders, J.) Gaya Prasad Singh v. Ram Sarober Saran Singh.

AIR 1934 Pat 471 : 15 PLT 453 : 7 RP 520 : 1 BR 369 : 155 IC 36 : 36 Cr LJ 624 (2).

——Possession given by Civil Court — Duty of Criminal Court to respect and maintain that possession.

It is the duty of the Criminal Court to respect, maintain and preserve the possession given by the Civil Court. It is the duty of the Criminal Court to give all the help provided by law to the man who has been put in possession of a property by the Civil Court. (Mohammad Noor and Luby, JJ.) Mahabir Singh v. Emperor.

AIR 1934 Pat 565 : 7 RP 208 : 15 PLT 819 : 1 BR 65 : 152 IC 591 : 36 Cr LJ 146.

——Possession given by the court, even though there be no overt act beyond the actual taking of possession under the orders of the court, breaks the previous continued possession of another party. (Grille, J. C.) Emperor v. Hakim Khan.

AIR 1934 Nag 217 : 36 Cr LJ 52.

——Magistrate, if bound to accept the evidence that delivery of possession was made by Civil Court officers.

Once it is established that possession was delivered, that fact proves the possession of the party taking delivery on the date when it was delivered and raises a strong presumption in favour of the continuance of that possession unless the other side can show that subsequently they have succeeded effectively in displacing the holder of it and restoring their own possession. On the other hand, there is no rule of law that a Magistrate is bound to accept the evidence that the Civil Court peon went to the village and actually performed the acts which are required to constitute a delivery of possession. (Rowland, J.) Dalip Narayan v. Rasik Lal.

AIR 1933 Pat 586 : 6 RP 279 : 146 IC 631 : 35 Cr LJ 154.

——Symbolical delivery of possession by Court, whether gives actual possession or mere right to possess— Bengal Land Revenue Sales Act (XI of 1859), S. 29.

Where possession has been delivered to the auction-purchaser by the Collector under S. 29 of Beng. Act XI of 1859, the auction-purchaser gets actual possession and not merely a right to possession in the eye of the law.

The effect of the delivery of symbolical possession is to transfer to the purchasers the possession which was in the proprietors. (Panckridge and Patterson, JJ.) Meher Ali Mia v. Bidyut Baran Mukerjee.

AIR 1933 Cal 424 : 37 CWN 652 : 6 RC 1 : 144 IC 708 : 34 Cr LJ 810.

——Decree of Civil Court.

Where in a suit for recovery of possession, possession is decreed, although the decree may be ex parte, as between judgment-debtor and decree-holder for purposes of S. 145, the presumption is that the decree-holder entered into possession on the date of the decree and continued till his possession was disturbed by the judgment-debtor, and the onus is on the judgment-debtor to prove his entry subsequent to date of decree. (Mullick, J.) Kishori Jha v. Anand Kishore Jha.

AIR 1930 Pat 162 : IR 1930 Pat 597 : 10 PLT 862 : 1930 Cr C 258 : 126 IC 293 : 31 Cr LJ 1005. (Overruled in AIR 1936 Pat 537 : 37 Cr LJ 1126)

——Decision of a civil Court as to proprietorship does not bar Magistrate from deciding question of possession. 2 ALJ 274, Foll. (Kolhatkar, A. J. C.) Shriram v. Samirmal.

AIR 1928 Nag 284 : 111 IC 662 : 24 NLR 148 : 11 AI Cr R 166 : 29 Cr LJ 902.

——Once a decree for possession in respect of a land has been passed in favour of a person, the magistrate cannot again refer him to civil court to have his title cleared. He is only to give effect to the decree of the civil court. (Simpson, A. J. C.) Lachmi Kuer v. Pratab Narain.

92 IC 75 : 27 Cr LJ 43 (Oudh).

——The decision of civil or criminal Courts is not conclusively binding upon the Magistrate. No hard and fast rule can be laid down in this respect. (Kulwant Sahay, J.) Bhulan Raut v. Kumari Rai.

AIR 1924 Pat 509 : 75 IC 535 : 5 PLT 69 : 2 Pat LR Cr 104.

——Decree of Civil Court— Possession— Decree — Revision.

In a proceeding under section 145, Cr. P. C., the Magistrate cannot go behind the decision of the Civil Court in the matter. It is not for the Magistrate to question the validity of a decree that has not been set aside by a competent Court. When the decree is inter partes it is immaterial whether the delivery of possession is symbolical or not. In disregarding this delivery of possession the Magistrate acts with gross irregularity and in a manner that is likely to cause a failure of justice. (Newbould and Suhrawardy, JJ.) Abhoy Mondal v. Babu Rai.

AIR 1923 Cal 176 (1) : 37 CLJ 256 : 27 CWN 267 : 73 IC 53 (2) : 24 Cr LJ 517 (2).

——Decree of Civil Courts — Value of.

It is true that a Magistrate in proceedings under S. 145 is bound to maintain the decisions as to title passed, and possession delivered by a Civil Court in execution of its decree, if such possession has been given within a reasonable

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time from the initiation of the proceedings under section 145. But this is not an invariable rule and the evidentiary value to be attached to the fact that the Civil Court has given possession to one party must depend upon the particular circumstances of the particular case. 33 Cal 33 Foll. (Adami, J.) Kedar Nath v. Jaleswar Ram.

AIR 1923 Pat 364 : 4 Pat LT 248 : 1 Pat LR Cr 166 : 72 IC 883 (2) : 24 Cr LJ 467 (2).

——Where there is a decree of a civil court in execution of which possession has recently been delivered the criminal court is bound thereby and must uphold a recent delivery of possession by the civil court. (Adami, J.) Maharaja Pratap Udai Nath Sahai Deo v. Sunderbans Koer.

AIR 1923 Pat 76 : 3 Pat LT 628 : 24 Cr LJ 279.

——Duty of Magistrate.

The Criminal Court is bound to maintain the auction-purchaser in possession of the property purchased by him after the passing of a decree by a Civil Court and the service of the writ of the delivery of possession. The Criminal Court cannot re-open the question of possession and investigate it under Ss. 107, 144 and 145 of the Cr. P. Code or in an enquiry of an offence under the Penal Code. The Magistrate has power under S. 145, Cr. P. Code to investigate into the actual service of the writ of delivery of possession. But as soon as it is proved that the dakhaldahani has been effected, it is his duty to maintain the possession of the auction purchaser. (Jwala Prasad and Coutts, JJ.) Ram Krishna Singh v. Emperor.

AIR 1922 Pat 197 (2) : 3 Pat LT 335 : 66 IC 817 : 23 Cr LJ 321.

——Delivery by civil court.

Whether the delivery of possession by the Civil Court is symbolical or actual or whether there was a recognition by the second party of the subtenancy claimed by first party petitioner or whether there was a resumption of tenure under S. 14 of Chota Nagpur Tenancy Act, these are plain questions which are not for the Magistrate to decide. When the Magistrate has the evidence before him that the judgment-debtor was ejected and possession delivered by the Civil Court he must act on it. (Ross, J.) Arjun Mahton v. Juggannath Singh.

AIR 1922 Pat 226 : 3 PLT 433 : 23 Cr LJ 275.

——Decree of Civil Court —Delivery of possession under —Effect of.

Where a decree-holder has obtained delivery of possession under O. 21, R. 35, C.P.C. in execution of his decree, the judgment-debtor is precluded and a Magistrate acts illegally and without jurisdiction in starting a case under S. 145, Cr. P. Code and not upholding the Civil Court's decree. Delivery of possession under O. 21. R. 35 is not symbolical but actual. 26 Cal. 625; 29 Cal.

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208; 20 CWN 796, Foll. (Sultan Ahmad, J.) Behari Gir v. Rani Bhubneshwari Kuer.

AIR 1920 Pat 633 : 5 Pat LJ 104 : 1 Pat LT 9 : (1920) Pat HCC 79 : 2 UPLR (Pat) 21 : 54 IC 984 : 21 Cr LJ 200.

——Decree of Civil Court — Question of possession.

A previous order of the civil court relating to the proceedings in dispute may throw light upon the evidence upon the matter but the evidentiary value to be attached to it must depend upon the particular circumstances of the individual case. Per Huda, J.—If there has been real contest between the parties to a suit and upon adjudication regarding title or possession, a party has been awarded a decree, and has been put in possession in execution of such a decree it may not be enough for a party claiming adversely to such a decree to show that he was not a party to it. In the case of an execution under a money decree there is no adjudication regarding title to the property except that an attachment gives rise to a claim and there is an adjudication on such claim or where the delivery of possession leads to an investigation under O. 21, Rr. 97 to 100, Cr. P. Code. In estimating the value of delivery of possession against third parties, it is also material to see what is the true nature of the possession said to have been delivered. (Walmsley and Huda, JJ.) Atal Chandran v. Srinath Laik.

AIR 1919 Cal 526 : 23 CWN 982 : 30 CLJ 123 : 53 IC 936 : 20 Cr LJ 840.

——Decree of Civil Court — Challenging of—Revision.

Certain properties were attached under S. 146 and in a Civil suit one of the claimants was declared entitled to possession from the Receiver. On application for delivery being made, proceedings under S. 145 were again instituted. Held, in revision that the proceedings were absolutely without jurisdiction and were liable to be quashed. (Knox, J.) Brahmanath v. Sundar Nath.

AIR 1919 All 311 : 17 ALJ 434 : 15 IC 170 : 20 Cr LJ 410.

——Decree of Civil Court — Possession of land purchased in execution of decree by judgment-debtor— Proceeding under S. 145— Decree-holder's right as against judgment-debtor — Civil Court's judgment.

Where a Civil Court had ordered possession against judgment-debtor, the decree-holder should not be ousted by an order under S. 145 and he should not be forced to go to the civil court again for a declaration though the judgment-debtor might have had possession actually. (Chitty and Walmsley, JJ.) Atul Hazra v. Uma Charan.

AIR 1916 Cal 339 : 23 CLJ 555 : 33 IC 822 : 20 CWN 796 : 17 Cr LJ 182.

——Civil Court decree between parties— Omission to consider effect is refusal of jurisdiction.

CRIMINAL P. C. (V of 1898), S. 145 — 45. Prior decision of civil, criminal or revenue Court — (a) Decision of civil Court

Where there is a decree of the Civil Court between the parties to a proceeding under S. 145 and the magistrate neglects to decide what effect the decree may have on the question of possession, he omits to deal with a material part of the case made before him resulting in a refusal of jurisdiction by him. (Stephen and Carnduff, JJ.) Gopala Chandra Chowdhry v. Uma Charan Ghosh.

5 Ind Cas 646: 11 Cr LJ 184 (Cal).

——Possession found by Criminal Court — Possession given by Civil Courts.

The possession found by a Criminal Court cannot be treated in the manner in which recent possession given under a decree of a Civil Court is treated in cases, under S. 145 of the Code.

In proceedings under S. 145, Magistrates always uphold the possession given by the Civil Courts; otherwise, a person, who had obtained a decree declaring his right to possession and had been put in possession, might find himself again forced to litigate his title. (Henderson and Geidt, JJ.) Kedar Prasanna Lahiri v. Lalit Mandal.

2 CLJ 147 : 2 Cr LJ 672.

——Question of possession—Decrees of Civil Court and orders of Criminal Courts.

The question of possession under S. 145 has to be determined with reference to a specified point of time; upon this question, every previous decree of a Civil Court or order of a Criminal Court is not conclusive; the evidentiary value to be attached to such decree or order must depend upon the circumstances of each particular case. (Rampini and Mookerjee, JJ.) Kulada Kinkar Roy v. Danesh Mir.

33 C 33 : 10 CWN 257 : 2 CLJ 271 : 2 Cr LJ 670.

——Dispute as to possession — Civil Court decree as to possession of property not clear—Magistrate's jurisdiction to decide the question of possession in such cases.

Where it cannot be disputed that a certain person has been declared owner and put in possession of certain property by a Civil Court, it is not open to a Magistrate to decide the question of possession contrary to the Civil Court's action. It is his duty in such a case to maintain and give effect to the order of the Civil Court. But where the decretal terms leave the factum of possession fairly open to doubt, it is competent to the Magistrate if, in his opinion, there is a dispute likely to lead to a breach of the peace, to construe the decree for the purpose of deciding on the evidence the fact of possession. (Chandavarkar and Aston, JJ.) In re Motilal Hargovind.

6 Bom LR 246 : 1 Cr LJ 256.

45. Prior decision of Civil, Criminal or Revenue Court—

(b) Decision of Revenue Court.

——S. 145 (6)— Rights determined by competent

CRIMINAL P. C. (V of 1898), S. 145 — 45. Prior decision of civil, criminal or revenue Court — (b) Decision of revenue Court

Court—Duty of criminal Court to maintain rights of successful party.

In view of the provisions of Sub-S. (9) of S. 145, it is discretionary with the Magistrate to summon or not to summon witnesses in a proceeding under S. 145. When the rights of the parties have been recently determined by a competent revenue Court (a decree of which Court is as effective as a decree of a civil Court) the dispute is at an end and it is the duty of the Magistrate in a proceeding under S. 145 to maintain the rights of the successful party and not to allow the defeated party to invoke the aid of the Magistrate and police to neutralise the effect of the decree of a competent Court: AIR 1936 All 322; ILR (1943) All 150; AIR 1947 Pat 245 and AIR 1924 All 777, Rel. on.; AIR 1936 All 177; AIR 1922 Oudh 256 and AIR 1934 Pat 471, Disting.

The fact that the operation of the decree passed by the revenue Court was stayed by the High Court pending appeal by an interim order does not nullify that decree. It only means that execution of that decree cannot be taken out pending the decision of the appeal. The decree subsists and must be treated as valid until it has been set aside or varied. (Bind Basni Prasad, J.) Mrs. V. E. Argles v. Chhail Behari.

AIR 1949 All 230 : 50 Cr LJ 345.

——Decision of commutation Court on question of possession— Magistrate can institute and investigate question of possession.

Even where the commutation Court has given a decision on the question of possession, a Magistrate is not incompetent to institute proceedings under S. 145 and investigate the question of possession. He can undoubtedly take into consideration the judgment of the commutation Court as an item of evidence in deciding the case. (Fazl Ali, J.) Ram Kripal Singh v. Sideshwar Singh.

AIR 1941 Pat 516 : 8 BR 25 : 14 RP 203 : 196 IC 469 : 42 Cr LJ 876.

——Right claimed mentioned in wazib-ul-arz—Presumption that it has been exercised within 3 months of enquiry, if arises.

In proceedings under S. 145, Criminal P. C., where it is established that a right claimed by a party is mentioned in the wajib-ul-arz, it is for the party denying it to establish that such a right had been abandoned. In the absence of any reliable evidence regarding abandonment, it must be held that the right has been exercised within 3 months of the institution of the enquiry. (Abdul Rashid, J.) Fajju v. Sirya.

170 IC 392 : 39 PLR 491 : 10 RL 107 : 38 Cr LJ 881.

——Taking possession under S. 87, Bengal Tenancy Act, is not forcible and the person so taking possession cannot be ousted under Cl. (4). (Chotzner

CRIMINAL P. C. (V of 1898), S. 145—45. Prior decision of civil, criminal or revenue Court — (b) Decision of revenue Court

and Duval, JJ.) Nekunja Behari v. Usobate Devi.

AIR 1927 Cal 944 : 100 IC 117 : 7 AI Cr R 357 : 31 CWN 242 : 28 Cr LJ 245.

——Ss. 145 and 350—Decision of officer under the Survey and Settlement Act—Value of decision on evidence given before another Magistrate— Propriety of.

It is open to a Magistrate in deciding a case under S. 145 of the Cr. P. Code to go behind the orders passed in favour of a party under the Survey and Settlement Act and the Bengal Tenancy Act. It is also open to the Magistrate to hold that on the evidence the presumption arising from an entry in the record of rights has been rebutted. (Newbould and Suhrawardy, JJ.) Syed Sadek Reza v. Sachindra Nath Roy.

AIR 1923 Cal 483 : 73 IC 265 : 37 Cal LJ 128 : 24 Cr LJ 569.

——S. 145 (4) —Possession —Evidence of —Land Registration Act, Ss. 52 and 78 —Registration.

A summary adjudication upon the question of possession by the Land Registration Officer under Act VII B. C. of 1876 is entitled to the same respect on the question of possession in a proceeding under S. 145 of the Cr. P. Code as the decree of a Civil Court. 6 Cal. 835 Foll. But where there was no adjudication of possession by the Revenue Courts in the land registration proceedings, and they refused to register the name of a particular party on the ground that he was neither a proprietor, manager nor a mortgagee, the Magistrate in a proceeding under S. 145 of the Cr. P. Code was bound to determine as to which of the parties was in actual and physical possession of the property in dispute. (Jwala Prasad, J.) Babulal Missir v. Manager Bethian Estate.

AIR 1920 Pat 717 : 1 Pat LT 588 : 58 IC 513 : 21 Cr LJ 785.

——Entries in Record of Rights.

Omission to give effect to presumption arising from entries in recently published record of rights —It is not a question of jurisdiction—No interference in revision. (Holmwood and Richardson, JJ.) Chintamani Jena v. Jagannath Ramanujo Das.

AIR 1915 Cal 644 : 19 CWN 123 : 16 Cr LJ 315.

——S. 145 (4)—Revision.

After a Revenue officer's order validating a notice to quit, the tenant's remedy after the lawful dispossession is an appeal or the like, but if he obstructs the landlord, he can be restrained under S. 145. (Johnstone, J.) Sri Ram v. Faujdar Singh.

33 PWR Cr 1912 : 193 PLR 1912 : 16 IC 527 : 13 Cr LJ 719.

45. Prior decision of Civil, Criminal or Revenue Court.

(c) Delivery of possession by Civil Court—Subsequent dispossession.

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——Evidence of title—Mines and minerals—Decree of Civil Court declaring title in one of the parties. (Sinha and Das JJ., Meredith J., contra.)

Proceedings under S. 145, can be initiated in respect of mineral rights if there is a dispute as regards possession between contending parties leading to an apprehension of a breach of the peace. Of course, it is open to the Magistrate ultimately to drop the proceedings on coming to the conclusion either that there was no apprehension of a breach of the peace or that the claim of one party was a mere pretence. If the Magistrate comes to the conclusion that, in spite of a clear declaration of title in favour of one party by a Court of competent jurisdiction, the judgment-debtor is in actual physical possession of the property, he must declare the possession unless he comes to the conclusion that the dispossession of the true owner took place within two months before the initiation of the proceedings. But, if the Magistrate finds that there is a declaration of title in favour of one party as against another party whose evidence of actual possession is not reliable, the Magistrate may declare the true owner's possession, however slight his evidence of actual possession may have been. It is not open to the Magistrate in such a proceeding to determine questions of title as between the contending parties; but, where there has been a determination of that question by a Court of competent jurisdiction he may respect that determination in valuing the evidence of actual possession led on either side. (Meredith, Sinha and Das, JJ.) S. M. Yaqub v. T. N. Basu.

AIR 1949 Pat 146 : 30 PLT 41 : 50 Cr LJ 299 (SB).

——Delivery of possession given by civil Court—Duty of Criminal Court is to support such delivery.

It is the duty of the Criminal Court to support the delivery of possession given by the civil Court unless it is found on evidence that the possession so delivered by the civil Court has been subsequently disturbed and the party in whose favour the possession is declared contrary to the writ of delivery of possession got possession after dispossessing the party who obtained possession through Court. (Ray, J.) Dulare Kumar v. Sabans Kumar.

AIR 1947 Pat 175 : 13 BR 539 : 1946 PWN 278 : 231 IC 90 : 48 Cr LJ 683.

——S. 145 (4)—Scope.

A Magistrate in exercise of the jurisdiction under the section cannot re-agitate a dispute that has been settled by a competent Court and give a declaration in favour of a party whose claim to title and subsisting possession has already been negatived in a very recent contested litigation. The scope and purview of S. 145 does not allow such free and untrammelled interference by cri-

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minal Courts with the final decision of the civil Court. This may not apply to cases where the civil Court's decision is old enough making room for possibilities of subsequent disturbances of the state of things found and pronounced to have been once existing. But any question of subsequent disturbance of possession within two months of the decision of the civil Court does not attract the applicability of S. 145 except upon a complaint of the decree-holder himself for the purpose of being restored to possession within the meaning of the proviso to Sub-S. (4) of S. 145 read with the latter part of Sub-S. (6) of that section. In the absence of such a complaint, proceedings taken by the Magistrate under Sub-S. (4) within two months of the decision of the civil Court are highly improper and illegal. Case law reviewed and relied upon. (Ray, J.) Jang Bahadur v. Nazemul Haqe.

AIR 1947 Pat 245 : 12 BR 770 : 226 IC 516 : 47 Cr LJ 976.

——Stale delivery of possession by Civil Court whether conclusive proof of present possession.

The law is that the Criminal Court ought to hold that if on a given date, the plaintiff has been put into possession by the Civil Court then on that date the plaintiff got possession as against the defendant. But where a considerable period elapses between the date of delivery of possession and the date on which possession of the land is disputed, a delivery of possession cannot be conclusive as to present possession. (Rowland, J.) Zafar Ahsan v. Jugeshwar Bux Roy.

AIR 1940 Pat 135 : 6 BR 155 : 12 RP 369 : 185 IC 346 : 41 Cr LJ 171.

——Ss. 145, 146—Decree-holder obtaining symbolical possession in execution of decree upon delivery warrant — Judgment-debtor attempting forcible entry within two months— Application under S. 145 by decree-holder— Magistrate by order under S. 146 (1) referring back parties to Civil Court— Propriety of.

Where in execution of a decree, the Court orders delivery of possession of judgment-debtor's property to the decree-holder and the Officer of Court executing the delivery warrant gives effect to the order and since then the decree-holder is in possession both in fact and in law of the property in question but the judgment-debtor, within two months of the execution of such warrant, attempts forcible entry upon the land, whereupon the decree-holder files a petition in Criminal Court under S. 145, Criminal P. C., the Magistrate cannot go behind the decision of the Civil Court in the matter and cannot ignore the decree even though the Court passing the decree had no jurisdiction over the land. It is immaterial that the delivery of possession is symbolical only. In the enquiry under S. 145, there is only one conclusion possible for the Magistrate to arrive at with reference to the land, that is that it was in the possession of the applicant on the date of the order passed under Sub-S. (1) of S. 145. Even assuming that the applicant (decree-holder) had been forcibly dispossessed at any time after the execution of the delivery order, the first proviso to Sub-S. (4) will operate in favour of the applicant. Consequently, when in such circumstances, the Magistrate passes an order under S. 146 (1) referring the parties back to Civil Court for the determination of their rights, the order is highly improper and opposed to all principles of justice. (Mya Bu, J.) Kan Maung v. Maung Po Tok.

AIR 1939 Rang 388 : 1940 Rang LR 157 : 12 R Rang 183 : 185 IC 119 : 41 Cr LJ 123.

——Decree-holder getting symbolic possession of judgment-debtor's zamindari property — Interference with possession by judgment-debtor — Proceedings by decree-holder under S. 145, if can be entertained.

Where a decree-holder is given symbolical possession of the judgment-debtor's zamindari property and he finds afterwards that his possession is being interfered with by the judgment-debtor and initiates proceedings under S. 145, Criminal P. C., for retaining possession, the Magistrate cannot refuse to entertain proceedings on the ground that the Civil Court had not given actual possession to the decree-holder.

If, however, circumstances show that the decree-holder or auction-purchaser has slept over his right and has allowed the judgment-debtor to regain possession of the property and he is at the time of the proceeding in peaceful possession of it, the matter stands on quite a different footing. But in such cases, the Magistrate must take it as an indisputable fact, once delivery of possession is proved, that on the day of the delivery of possession the party to whom possession was given was in possession as against the man who was party to that delivery of possession and was bound by the writ. He must start with the presumption that the state of things which existed on that day continued to exist thereafter unless the contrary is established. The judgment-debtor can only succeed if he establishes beyond doubt that he had completely ousted the man who was put in possession by the Court and was in peaceful possession of the property in dispute. (Mohamad Noor, J.) Rajendra v. Chintamani.

AIR 1939 Pat 151 : 19 PLT 632 : 5 BR 385 : 11 RP 493 : 20 PLT 333 : 4 Cut LT 69 : 180 IC 322 : 40 Cr LJ 339.

——Party placed in possession by Civil Court— Criminal Court must support such party.

The Criminal Court is bound to support persons placed in possession of property by the Civil Court and whose possession has been wrongfully disturbed. The other party must show that they subsequently came into possession by some lawful means. The Magistrate is not only bound to look

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into events occurring within two months of the date when the proceedings were drawn up but he should consider the whole history of the dispute from the date when the first party was put in possession by the Civil Court. His failure to do so vitiates his findings. (Madan, J.) Chandeshwar Prasad Narain v. Dwarka Singh.

AIR 1937 Pat 557 : 4 BR 41 : 10 RP 223 : 171 IC 593 : 38 Cr LJ 1096.

——Decree of Civil Court—Inquiry as to possession —How made — Title questions and validity of decrees.

Objections as regards the validity or otherwise of the decree or the proceedings to annul the encumbrance which gives rise to the dispute, are matters beyond the scope of an enquiry in a proceeding under section 145. Although a Magistrate in deciding the question of possession under section 145 of the Code is not in every case bound by the previous order of a Civil Court or Criminal Court relating to the possession of the subject-matter of dispute and the weight to be attached to any such previous order depends upon the facts and circumstances of the particular case, yet when there is a recent order of a Civil Court delivering possession to a particular party, that order ought ordinarily to be respected and given effect to by a Magistrate under section 145, unless and until there is something shown which might induce the magistrate to hold that subsequent to the delivery of possession something had happened which had the effect of dispossessing the party to whom possession had been delivered by the Civil Court. AIR 1922 Cal. 364; 33 Cal. 33 and 1 PLJ 336 Cons. (Kulwant Sahay, J.) Rambarai Rai v. Sagina Rai.

AIR 1923 Pat 437 : 4 Pat LT 333 : 75 IC 363 : 24 Cr LJ 939.

——S. 145 (4) —Decree of Civil Court— Possession on date of preliminary order not found — Possession found on a date prior thereto— Presumption of continuance of possession — Order confirming possession.

Where in a proceeding under S. 145 of the Criminal Procedure Code, 1898, the Magistrate found one party to have been in possession a few days before the date of the preliminary order and confirmed his possession without finding who was in possession on the date of preliminary order itself but the interval between the two dates was very short (only 5 days) and there was nothing on the record to suggest that there was any change of possession in that short interval and the party confirmed in possession had a decree of a competent Civil Court declaring him entitled to possession. Held that the High Court was not bound to vacate the order.

It would be the duty of a Magistrate to maintain the possession of the party, who had a decree of

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a competent Court and who was put in possession in execution. 5 C W N 563: 6 C W N 841, followed; (Kumaraswamy Sastri, J.) Mahomed Hussain Sahib v. Pachayyappa Chetty.

AIR 1922 Mad 356 : 14 LW 678 : (1921) MWN 866 : 65 IC 444 : 42 MLJ 147 : 23 Cr LJ 92.

——No hard and fast rule can be laid down for a Magistrate whether he must give effect to a recent decision or proceeding of a Criminal Court or a Civil Court. But in proceedings under S. 145 he is bound to respect a Civil Court's decree. If he does not do so he acts without jurisdiction. He can pass orders if he finds that the possession is disturbed after the decree or has changed hands. In such cases he must refer to the Civil Court's decree and assign reasons in his order for doing so. (Chamier C. J., Sharfuddin and Roe, JJ.) Parmessar Singh v. Kailaspati.

AIR 1916 Pat 292 : 1 Pat LJ 336 : 35 IC 891 : 1 Pat LW 95 : 1917 Pat (HCC) 1 : 17 Cr LJ 369 (FB).

45. Prior decision of Civil, Criminal or Revenue Court—

(d) Person in possession not party to suit.

——The proposition that possession obtained through Court should be upheld would be applicable to possession obtained against the judgment-debtor but not when the party in possession at the time is not the judgment-debtor but one of the decree-holders claiming exclusive title. (Gruer, J.) Sheoprasad Shriram v. Govindram Hardit Rai.

AIR 1940 Nag 265: 1940 NLJ 375: 13 RN 78: 189 IC 774: 41 Cr LJ 799.

——A Criminal Court is not bound by ex parte Civil Court decree in execution of which plaintiff landlord obtained merely symbolical possession, in a case between the decree-holder and the third party. 20 CWN 796; 23 Cal 425, Dist. (Greaves and Panton, JJ.) Promoda Sundari Dassi v. Khetra Bag.

AIR 1925 Cal 186 : 81 IC 928 : 25 Cr LJ 1104.

——Decree of Civil Court— Possession disputed — Decree of Civil Court and proceedings under S. 145 giving possession — Magistrate's duty.

Where in spite of the decree of a Civil Court declaring title and giving possession to the first party and also in spite of an order in appeal of High Court to that effect under S. 145, Criminal Procedure Code, the Magistrate on the ground that second party was not a party to the previous proceedings and that the dispute was not the same declared them to be entitled to claim possession and gave it: Held, when under Cl. 3 proceedings under Cl. 1 of S. 145 are published by affixing at a conspicuous place or near the subject-matter in dispute and this sufficient notice is given to persons interested in the subject-matter in dispute to come forward to be made

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parties to the proceedings, the proceedings are binding upon the whole world. As far as the Magistrate is concerned, the question of possession is thus set at rest once for all and thereafter he should maintain the order by taking action under Ss. 107 and 144 as the case may be against persons interfering with the possession of the party declared by the Magistrate to be in possession. The possession was effectively delivered by the Civil Court to the 1st party and the only course open to persons, other than the judgment-debtors, was to apply under section 100 of the Code and thereafter to institute regular suit. The subject-matter in dispute being the same in the new as well as in the previous proceedings that in itself is sufficient ground to set aside the order of the Magistrate. (Jwala Prasad, J.) Raghunandan Pandey v. Kishin Mohan Singh.

AIR 1922 Pat 210 : 10 PLT 685 : 77 IC 1005 : 25 Cr LJ 541.

——S. 145 (2) — Decree of Civil Court — Heirs of judgment-debtor remaining in possession notwithstanding delivery of possession to auction purchaser by Civil Court.

Where it was found that notwithstanding the symbolical delivery of possession of a tank to the auction-purchaser in execution of a decree of a Civil Court the heirs of the judgment-debtor retained possession, held, that the possession of the heirs was adverse to the auction-purchaser and in that view no order under S. 145 in favour of the latter can be passed, held, also that where the auction-purchaser was ousted by the judgment-debtor an order under S. 145 can be made in favour of the former. (Teunon and Suhrawardy, JJ.) Shahabaj Mandal v. Bhajohari Nath.

AIR 1922 Cal 364 : 49 Cal 177 : 25 CWN 743 : 24 Cr LJ 875.

——Decree of Civil Court— Possession— Effect of order of court.

Where a party whose possession is disturbed by an order of court fails to take the step under S. 37 of the Bihar and Orissa Public Demands Recovery Act or rule 103 of O. 21, C. P. C. his remedy is to file a suit in a civil court. But subject to the result of the suit the order is final and conclusive and is binding upon the criminal Court and in fact any court which has to adjudicate upon the possession of the parties. (Jwala Prasad, J.) Kamala Prasad Singh v. Gobind Sahay.

AIR 1922 Pat 13 : 3 Pat LT 826 (2) : 71 IC 785 : 24 Cr LJ 241.

——By delivery of possession by a Civil Court in a partition suit, the part-proprietor is not estopped from setting up a claim of tenancy in the land allotted exclusively to another proprietor by the mere fact that the Civil Court in the partition suit delivered possession to another. (Jwala

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Prasad, J.) Pathak Jairam Singh v. Thakur Doman Singh.

AIR 1921 Pat 295 : 2 Pat LT 266.

——Decree of Civil Court—Decree regarding land—Execution of decree—Delivery of possession—Right of other members of family—Cr. P. Code, S. 107.

A landlord got a rent-decree against the tenants recorded in the Sherista and obtained delivery of possession through the Civil Court in execution. The judgment-debtors with other members of their family who were not parties to the rent-decree interfered with the possession of the landlord purchaser. Held, that it was not necessary for the landlord to institute his rent suit against all the members of the family but he could sue only those who were recorded in his Sherista as tenants of the holding and that those, who were not impleaded could litigate their title in a Civil suit. There being no dispute concerning the lands, the Civil Court's decree and delivery of possession thereunder must be upheld by the Criminal Court. The only way to maintain the possession of auction purchaser is by proceeding under S. 144 or S. 107 and a proceeding under S. 145 was unwarranted, there being no dispute as to the possession having been delivered to the purchaser by the Civil Court. (Jwala Prasad, J.) Sukan Singh v. Prayag Singh.

AIR 1920 Pat 210: 1 Pat LT 81: 2 UPLR (P) 35 : (1920) Pat HCC 124 : 57 IC 95 : 21 Cr LJ 575.

——An intermediate holder between the decree-holder and the judgment-debtor may properly contest the question of delivery of possession which will have to be adjudged by the Magistrate as also when possession is delivered under O. 21, R. 36, if the other ingredients under S. 145, Cr. P. Code be established. (Sultan Ahmad, J.) Behari Gir v. Rani Bhubneshwari Kuer.

AIR 1920 Pat 633 : 5 Pat LJ 104 : 1920 Pat (HCC) 79 : 21 Cr LJ 200.

——Decree of Civil Court—Enquiry into possession —Order of Civil or Criminal Court — Revision.

If one of the parties to the proceedings was in actual possession of the property in dispute and lost that possession by the execution of the decree of the Civil Court, then it lies heavily on him to show that he has since regained possession. But if he was not a party to the Civil decree and if it is not shown that either of the party to the civil decree was in actual possession, then the former civil proceedings would be of no evidentiary value against him. (Batten, A. J. C.) Shankar v. Bhayaji.

AIR 1919 Nag 98 : 51 IC 269 : 20 Cr LJ 445.

——Decree of Civil Court— Finding as to possession essential — Civil Court's view.

The decision of a Civil Court on the question of possession is not conclusive in proceedings under

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S. 145 and the Magistrate must arrive at his own finding. (Sadasiva Iyer, J.) Annaswamy Iyengar v. Muthu Kumara Pillai.

AIR 1915 Mad 83 : 25 IC 991 : 15 Cr LJ 663.

——Decree of Civil Court.

A decree of a civil court adjudging title of one of the parties does not bar a magistrate from determining the actual possession on a particular date under S. 145. (Ayling, J.) Subbarama Aiyar v. Marya Pillai.

AIR 1914 Mad 78 : 16 MLT 52 : 1 LW 493 : (1914) MWN 798 : 24 IC 967 : 15 Cr LJ 559.

——S. 145 (4) — Decree of Civil Court— Possession under.

Under a decree of a Civil Court a party was put in possession of disputed property which was not one against the other party in the present suit. Held, that in a proceeding under S. 145 of the Cr. P. Code a Magistrate has power to declare the possession of the second party. (Carnduff and Imam, JJ.) Jogabandhu Shah v. Raj Kumar Roy.

15 IC 999 : 13 Cr LJ 583 (Cal).

——Dispute between tenants of joint owners — Jurisdiction of Magistrate to proceed under S. 145.

Certain land was jointly leased to tenants by two joint owners and the former continued in possession for several years under the lease. One of the joint owners sued for partition of his share and obtained a decree but he did not obtain possession of his share under the decree and while the old tenants were in possession as before, some new tenants forcibly entered on the land asserting that they were the tenants of only one of the joint owners. The Magistrate, acting under S. 145 Criminal Procedure Code, put the old tenants in possession:

Held, that the Magistrate did not act without jurisdiction, and that though there is no doubt that the Court must give effect to a decree of a Civil Court for partition, yet in this instance the dispute not being between the parties to the decree but between two rivial sets of tenants, the Magistrate was right in putting the old tenants into possession of the land. (Parlett, J.) Ma E Mya v. Maung Po Thaung.

8 Ind Cas 453 : 3 Bur LT 74 : 11 Cr LJ 655.

——Enquiry as to possession— Symbolical possession in execution of a foreclosure decree, not effective against a lessee who was not a party to the mortgage suit.

It is a settled rule of law that no decree for foreclosure could be effective against a person interested in the property, if he was not made a party to the suit. Thus where the mortgagee obtained a foreclosure decree against the mortgagor without impleading the lessee in possession and in execution obtained symbolical delivery of possession, it was held that such possession

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could not affect the possession of the lessee. (Mitra and Holmwood, JJ.) Bloomfield v. Gangadhar Kundu.

4 CLJ 562 : 4 Cr LJ 503.

——S. 145—Decree of Civil Court.

A Magistrate is not justified in disregarding the decree of a Civil Court. It is his duty to uphold and carry out that decree so far as lies in him to do so. A Civil Court decreed redemption of a certain share in a zemindari. The decree only dealt with proprietorship of the land. The decree did not disturb the possession of the mortgagee as tenant. The mortgagee claimed to remain in cultivatory possession of certain plots of land, contending that the decree of the Civil Court did not affect his rights as a tenant. A dispute for possession arose between the tenant and the mortgagor's representative, held, that the Magistrate had jurisdiction to pass an order under S. 145 declaring the possession of the tenant (Ex mortgagee) and that, therefore, the High Court could not revise his order. (Stanley, C. J.) Baldeo Baksh Singh v. Raj Ballam Singh.

2 ALJ 274 : 2 Cr LJ 236.

45. Prior decision of Civil, Criminal or Revenue Court—

(e) Prior order under S. 145 Criminal P. C. See Note 16—Effect of order under the section.

45. Prior decision of Civil, Criminal or Revenue Court—

(f) Prior order under S. 522 Criminal P. C.

——Ss. 145 and 522—Disposal of property.

An order under S. 522 which is not carried out is no bar to a proceeding under S. 145. (Holmwood and Sharfuddin. JJ.) Probhat Chandra Chatterjee v. Prasanna Kumar Sen.

AIR 1915 Cal 157 : 18 CWN 1088 : 26 IC 148 : 15 Cr LJ 700.

46. Procedure in recording evidence.

——Ss. 145, 146 and 148— One party claiming to be in possession — Order that should be passed— Neither party claiming to be in possession — Procedure.

If only one party asserts its possession and the other party does not claim to be in possession, it would be open to the Magistrate to pass the final order in favour of the former party without recording any evidence. There would be no point in recording evidence in the absence of any contest.

When neither party files a written statement claiming to be in possession, again there arises no question of recording evidence of possession. In such a case, the Magistrate can certainly not pass an order in favour of either party declaring it to be in possession, unless he gets a local inquiry made under S. 148 and it is found that that party is in possession. He can order attachment under S. 146 on the ground that in the absence of any claim to possession and evidence about

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possession he is unable to decide which party is in possession. If he does not get a local inquiry made, he is bound to pass an order under S. 146 because there is no other order that can be passed. (Desai, J.) Safdari Begam v. Ashfaq Husain Khan.

AIR 1952 All 538 : ILR (1951) 1 All 709 : 1950 ALJ 299 : 1950 AWRHC 367 : 1952 Cr LJ 637.

——Recording of evidence—Delegation.

Magistrate holding inquiry must take evidence himself. He cannot delegate to the subordinate magistrate the duty of recording the evidence. Any order passed by him without himself taking evidence and depending solely on the report of the subordinate magistrate should be deemed to be one without jurisdiction. (Sundaram Chetty, J.) Venkatapati v. Sanyasi Raju.

AIR 1932 Mad 368 : 33 Cr LJ 536.

——Ss. 145, 356, 537—Omission to take down evidence in vernacular—Validity.

Under S. 356 (1), Criminal P. C., in a proceeding under S. 145 of the Code, the evidence of each witness must be taken down in the vernacular by the Magistrate himself or under his superintendence. But an omission to comply with this provision of the Code is only a mere irregularity curable under S. 537 of the Code and does not vitiate the trial. (King, J.) Kallu v. Bashiruddin.

AIR 1931 All 3 : 53 All 172 : (1930) ALJ 1504 : Ind Rul (1931) All 141 : 129 IC 269 : 32 Cr LJ 372.

——Ss. 145, 356, 537— Failure to record evidence in vernacular—Validity.

The mere fact that in a proceeding under S. 145, Criminal P. C., the Magistrate had not recorded the evidence of the witnesses in the manner laid down in S. 356 of the Code, but had only kept a memorandum of the evidence in English, is not an illegality vitiating the proceedings but a mere irregularity which could be cured by S. 537 of the Code. (Kendall, J.) Sankatha Misir v. Bishwanath.

AIR 1931 All 2 : Ind Rul (1931) All 137 : 129 IC 265 : 32 Cr LJ 368.

——Irregularity—Mis-stating of evidence—Effect.

Where the Magistrate's order was attacked on the ground that the amended proceedings were incorrect with respect to the names of the parties and the subject matter and the kucha receipts relied upon by the Magistrate related only to a few of the claimants and could not therefore be evidence as regards possession of the large body of the members who claimed specific and separate lands in dispute and who had no community of interest and lastly on the ground that there was a mis-statement of evidence, Held: on the facts proved the Magistrate's order must be vacated.

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(Jwala Prasad, J.) Mt. Ram Ratan Kuar v. Tarakh Nath.

AIR 1922 Pat 249 : 25 Cr LJ 412.

——Procedure by successor.

Section 350, proviso (a) of the Criminal P. C. is limited to criminal trials and does not extend to enquiries under S. 145. Consequently a magistrate has jurisdiction to proceed with the further trial of a case under S. 145, Cr. P. Code, even though a portion of the evidence has been recorded by his predecessor and an application is made to him on behalf of one of the parties to start proceedings de novo. (Newbould and Suhrawardy, JJ.) Syed Sadek Raza v. Sachindra Nath Roy.

AIR 1923 Cal 483 : 73 IC 265 : 37 Cal LJ 128 : 24 Cr LJ 569.

——If the word "accused" in S. 360 does not include persons against whom an order under section 145 (1) has been drawn up then there is a plain inconsistency in the section itself; the section must at least mean that in the case of proceedings under Chapter XII the evidence must be read over to the witnesses. The omission only exempts the witnesses from prosecution for perjury but Magistrate's order based upon the depositions is not ultra vires. (Ross, J.) Ramnarain Singh v. Dhonrai Gope.

AIR 1922 Pat 371 : 3 PLT 291 : 23 Cr LJ 125.

——Duties of Magistrate — Non-compliance with S. 356 (1), Cr. P. C.—Revision.

Non-compliance with provisions of Cr. P. Code S. 356 (1) vitiates order under S. 145. (Sarfuddin and Teunon, JJ.) Sadananda Mandal v. Krishna Mandal.

AIR 1915 Cal 664 : 42 Cal 381 : 19 CWN 124 : 27 IC 672 : 16 Cr LJ 192.

47. Question of title—

(a) Irrelevancy of

(b) When may be considered.

47. Question of title—

(a) Irrelevancy of

——Possession at the date of preliminary order—Question of title.

In a proceeding under S. 145, Criminal P. C., what the Magistrate has to determine is the fact of actual physical possession at the date of the preliminary order under S. 145 (1). The Magistrate is not entitled to determine the question of title and pass an order on the footing that possession follows title. (Das, J.) Khartar Sao v. Pradip Singh.

AIR 1952 Pat 234 : 1952 Cr LJ 699.

——Ss. 144 and 145 deal with possession only and not with title—Petitioners in possession—Even if their possession is wrongful they cannot be ousted from possession by issue of injunction under

CRIMINAL P. C. (V of 1898), S. 145—47. Question of title—(a) Irrelevancy of

S. 134. (Harries C. J. and S. R. Das, J.) Sairu Seikh v. Shyamlal Sardar.

AIR 1952 Cal 200 : 1952 Cr LJ 566.

——Magistrate completely ignoring question of possession and going into question of title acts illegally. (M. C. Desai, J.) Bharosa v. State.

1951 AWR (HC) 507.

——Scope of civil dispute.

Criminal Courts are not the forum for settling civil disputes however complicated they might be and however long it must take to have them decided in a civil Court even though a second time on different grounds, if necessary and permitted by the law. (Kesho Ram Passey, J.) Richhpal v. L. Ram Saran Dass.

3 Pep LR 71.

——In proceeding under S. 145, the magistrate is concerned only with the question of actual possession and must determine that question irrespective of the right to possession. (Meredith, Sinha and Das, JJ.) S. M. Yaqub v. T. N. Basu.

AIR 1949 Pat 146 : 30 PLT 41 : 50 Cr LJ 299 (S.B.).

——Marwar Criminal P. C., S. 145—Evidence as to possession on both sides equally unworthy of credit—Magistrate cannot enter into question of title—Proper course is to pass order under S. 146.

It is only when a Magistrate finds on enquiry that the evidence as to possession adduced by the parties is reliable but so equally balanced that he is unable to conclude from suuch evidence as to which of the parties was in possession that he is entitled to enquire into the rights of the parties and corroborate the evidence as to possession by the presumption that possession follows title. Such presumption cannot, however, be applied to cases when the evidence as to possession on both sides is equally unworthy of credit. In such a case the proper course for the Magistrate is to pass an order under S. 146. AIR 1923 Cal. 303, Rel. on. (Sukhdeo Narain, J.) Mana v. Thikana Daopan.

1947 MLR 21 (Cr).

——Section is concerned only with persons in actual possession and not with niceties of title.

Section 145 is not concerned with the niceties of title but only with the persons in actual possession who are likely to create a breach of the peace. It does not matter for the purposes of the section what capacity the person occupies or where the title lies, the only question being whether he is in possession or is likely to create a breach of the peace. It is immaterial if he is in possession as an agent of a third person who is not a party to the proceedings. (Bose, J.) Pusaram v. Deorao.

AIR 1947 Nag 188 : ILR (1946) Nag 991 : 1946 NLJ 602 : 229 IC 138.

——"Actual" possession has no reference to any right to possess. What the magistrate has to

CRIMINAL P. C. (V of 1898), S. 145—47. Question of title—(a) Irrelevancy of

see is the "actual possession" at the date of order under S. 145 (1). (Davis, J. C. and Lobo, J.) Rahimalishah Alishah v. Emperor.

AIR 1940 Sind 61 : 41 Cr LJ 493.

——Section, if applies to case of dispossession of tenant by landlord.

Section 145, Criminal P. C., covers the cases of dispossession of the tenants by their landlords. The question of title does not arise before the Magistrate making an inquiry under S. 145, Criminal P. C. He is concerned with the question of possession in such proceedings. (Jai Lal, J.) Muhammad Ali v. Ladha.

AIR 1938 Lah 122 : 39 PLR 775 : 19 RL 439 : 173 IC 352 : 39 Cr LJ 297.

——Questions of title are irrelevant under the section. (Gruer, J.) Emperor v. Sunderlal.

AIR 1936 Nag 271 : 9 RN 179 : ILR (1937) Nag 174 : 167 IC 359 : 38 Cr LJ 375.

——S. 145 (4)—Only point for determination is which party was in actual possession at time of preliminary order.

The only point for determination in proceedings under S. 145 is which party was in possession at the time of the preliminary order. It does not matter whether such possession was wrongful or not. Actual possession is all that matters, subject, of course, to Proviso 1, Sub-S. (4), S. 145.

The Magistrate should not base his order on the respective merits of the claims of the parties to title and thus arrogate to himself the functions of the Civil Court. (Grille, J. C.) Abdul Latif v. Mohd. Masud Khan.

AIR 1936 Nag 3 : 18 NLJ 100.

——Inquiry—Whether should be confined to question of possession.

An inquiry under S. 145, Criminal P. C., should, as far as possible, be confined to the question of possession only. (Muhammad Noor, J.) Gursahai Singh v. Meghu Mahaton.

AIR 1935 Pat 83 : 16 PLT 19 : 1 BR 312 : 7 RP 471 : 154 IC 426 (2) : 36 Cr LJ 513.

——The propriety of the order whereby a Magistrate assumes the function of the Civil Court and makes an order which practically amounts to an order of ejectment on grounds of title may certainly be questioned, though he may be technically justified by the fact that he records his apprehension of a breach of the peace. But where the effect of the order has expired and the matter is before the Civil Courts, the application for revision of the order will be dismissed. (James, J.) Chakkan Ram v. Raghu Nath Ram.

AIR 1935 Pat 145 : 7 RP 440 : 1 BR 286 (1) : 154 IC 184 : 36 Cr LJ 474.

——In proceedings under S. 145, Courts have no concern with title. Possession is the only matter which the Magistrate should concern himself with. Where there has been no dispossession, the case

CRIMINAL P. C. (V of 1898), S. 145 — 47. Question of title—(a) Irrelevancy of

is not covered by S. 145 (4) and the question of dispossession does not arise. (Ferrers, J. C. and Mehta, A. J. C.) Natho Khan v. Emperor.

AIR 1932 Sind 145 : 26 SLR 353 : 34 Cr LJ 216.

——An enquiry under S. 145 (4) should relate to the question of actual possession and not to the question of right to possession. (Sundaram Chetty, J.) Venkatapathi v. Sanyasi Raju.

AIR 1932 Mad 368 : 35 MLW 390 : (1932) MWN 425 : Ind Rul (1932) Mad 496 : 138 IC 68 : 33 Cr LJ 536.

——Under Sub-S. 4, S. 145, the Magistrate has to decide the question of possession without reference to the merits of the claim of any party and a proper judgment under the section should state the case of both parties and then leave alone the question of title. If there is oral evidence on either side, there should be some discussion of it. (Allanson, J.) Hazari Gope v. Mt. Bibi Amna.

110 IC 580 : 10 PLT 47 : 29 Cr LJ 724.

——The question of title has been expressly excluded from Magistrate's consideration under S. 145. (Hallifax, A. J. C.) Ganpat Kunbi v. Dewaji.

110 IC 228 : 10 AI Cr R 411 : 29 Cr LJ 676.

——Magistrate is to decide the question of possession and not that of title which is to be decided by a Civil Court. (Marten and Coyajee, JJ.) Mallappa In re.

AIR 1926 Bom 313 : 28 Bom LR 488 : 27 Cr LJ 734.

——Questions of title, fraud, etc., cannot be tried in proceedings under S. 145 or S. 144. (Adami and Bucknill, JJ.) H. V. Low & Co., Ltd. v. Manindra Chandra.

AIR 1925 Pat 33 : 84 IC 332 : 3 Pat 809 : 26 Cr LJ 268.

——Elaborate enquiries into questions of title need not be made as the proceedings are intended to be summary. (Kendall, A. J. C.) Emperor v. Mt. Man Kunwar.

AIR 1925 Oudh 149 : 81 IC 905 : 25 Cr LJ 1081.

——The enquiry under the section is strictly limited to the actual fact of possession. An adjudication on the merits is opposed to the express provisions of the section and is without jurisdiction. (Pratt, J.) Nga Po Tin v. Nga Po Soung.

AIR 1923 Rang 211 : 1 Rang 53 : 2 Bur LJ 32 : 24 Cr LJ 740.

——Relevancy of title.

An agreement to get the case decreed on title and not to produce any evidence as to possession does not fall within the scope of S. 145. (Adami, J.) Pratab Udai Nath v. Sunderbans Koer.

AIR 1923 Pat 76 : 3 Pat LT 628 : 71 IC 999 : 24 Cr LJ 279.

——Applicability — Dispute between landlords —

CRIMINAL P. C. (V of 1898), S. 145—47. Question of title—(a) Irrelevancy of

Tenants in actual possession— Section does not apply.

Where the fact is that the land in dispute is cultivated by tenants whom each side claims to be his and the question resolves itself into one as to the title of the disputed land, there is no room for action under S. 145, Cr. P. Code. The dispute can only be settled by a Civil Court. (Chevis, J.) Atma Ram v. Allah Wasaya.

65 IC 630 : 23 Cr LJ 166 (Lah).

——Large areas—Right to carry on boring operations— Complicated question of title — Constructive possession — Duty of Magistrate.

Per Chaudhury, J.—When a party claims under a document or agreement the right of doing certain things over a large extent of territory, the performance of acts under such alleged right in one portion of the ground over which the right extends although it may be good and sufficient for the purpose of keeping alive that right so as to be an answer to the plea of limitation raised in a civil suit is not of itself a sufficient possession on which the Magistrate's order under S. 145 may be based for the purpose of forbidding in a distant locality acts not necessarily in conflict with such possession though at variance with the right. The Magistrate is not the proper forum for determining such question. In such a case the Magistrate is to proceed under S. 107, Cr. P. C. Proceedings under S. 146 of the Code with regard to a large mouza will cause great injustice to the persons in actual occupation. It is not the function of a Criminal Court to go into complicated questions of title and possession including that of adverse possession and of constructive possession of wide areas inferred from actual possession of limited areas. (Chaudury and Newbould, JJ.) The Indian Iron and Steel Company v. Banso Gopal Tewari.

AIR 1920 Cal 824 : 32 CLJ 54 : 59 IC 403 : 22 Cr LJ 99.

——Relevancy of title.

In proceedings under S. 145 the Court is in no way concerned with the question of title. It has merely to consider and investigate the question of possession. (Das, J.) Ram Prasad Sahu v. Emperor.

AIR 1920 Pat 520 : 54 IC 616 : 21 Cr LJ 136.

——Relevancy of title—Factum of possession.

The actual factum of possession is a vital question for determination under S. 145. (Atkinson and Ali Imam, JJ.) Ritbaran Singh v. Emperor.

AIR 1918 Pat 146 : 4 Pat LW 120 : 46 IC 709 : 19 Cr LJ 789.

——Relevancy of title—Actual possession—Nature of possession, irrelevant.

S. 145 is concerned solely with the fact of actual physical possession whether lawful or unlawful, whether enjoyed in his own right or on

CRIMINAL P. C. (V of 1898), S. 145 — 47. Question of title—(a) Irrelevancy of

behalf of others. Therefore in proceedings under this section, any question as to whether possession is on behalf of others or one's own right is irrelevant. 4 C W N 426, Dist. Questions as to the rights of parties raised by their written statements under S. 145 are quite irrelevant, as such proceedings are initiated by the Magistrate in the interests of public order and tranquillity and it is his preliminary order that settles the actual issue between the parties and founds his jurisdiction. (Spencer and Trotter, JJ.) Narayana v. Kandasami.

AIR 1916 Mad 967 : 3 LW 164 : 29 IC 541 : 16 Cr LJ 525.

——Duties of Magistrate—Title—Question of.

In proceedings under S. 145, the question of title does not arise. (Lindsay, J. C.) Inayat Ullah v. Amanat Husain.

AIR 1914 Oudh 31 : 1 OLJ 242 : 24 IC 350 : 15 Cr LJ 470.

——S. 145, Cl. (4) — Question of possession — Magistrate when exceeds jurisdiction.

In proceedings under S. 145 of the Code the Magistrate has to decide the question of possession without reference to the merits of the claims of any of the parties to a right to possess the subject-matter of dispute and he exceeds his jurisdiction when he goes into the merits. (Stephen and Coxe, JJ.) Ram Dyal Mahton v. Kedarnath.

6 CLJ 182 : 6 Cr LJ 192.

——Title to immoveable property.

Questions relating to the title to immoveable property are for judicial tribunals to decide, and it is a great wrong if any officer, by the use of his executive authority, seeks to supersede those tribunals, and usurp their functions, and it is certainly his duty, in any steps he deems it necessary to take, to keep within the limits of the law. Disputes as to the title to immoveable property can be dealt with only by the Civil Court. (Wilson and Porter, JJ.) Gopinath Paryah v. Empress.

2 CLJ 555 : 10 CWN 82 : 3 Cr LJ 169.

——Ss. 145 and 148—Questions of title— Removal of a bundh — Jurisdiction of Magistrate to award costs and damages.

In a case under S. 145, the Magistrate cannot deal with the matters as if he had to try a question, solely, of title and not one of possession. It is his duty to enquire as to which of the parties was in possession. (The entire order set aside, including the order as to costs.) (Henderson and Geidt, JJ.) Prayag Mahaton v. Gobind Mahaton.

32 C 602 : 9 CWN 862 : 2 Cr LJ 552.

47. Question of title—

(b) When may be considered.

——S. 145 (4)—Questions of title.

CRIMINAL P. C. (V of 1898), S. 145 — 47. Question of title—(b) When may be considered

Where the evidence on the question of actual possession is equally balanced, a Magistrate may inquire into the title of the parties to give effect to the presumption that possession follows title, though a case may not be decided on this presumption, where the evidence on both sides is equally incredible. (Ram Labhaya, Ag. C. J.) Depu Kachari v. Padmakanta Barua.

AIR 1952 Assam 185 : ILR 1952-4 Assam 323 : 1952 Cr LJ 1693.

——Evidence of title—Consideration.

Consideration of the evidence of title is not usual in proceedings under S. 145 but the Court can do so in order to decide effectively the question of possession which was before it where the oral evidence in that regard is equally balanced. (Misra, J.) Parmeshwar Din v. Sheo Moorat.

AIR 1952 All 918 : 1952 ALJ 266 : 1952 AWR HC 192 : 1952 RD (HC) 211 : 1952 Cr LJ 1650.

——Fact of actual possession — Question of title how for relevant.

In proceedings under S. 145, the material question for determination is which of the parties was at the date of the preliminary order in actual possession of the subject of dispute. Questions relating to title should only be considered where consideration is necessary for the purpose of determining who is in possession. (Hemeon Ag. C. J.) Onkarprasad v. Beniprasad.

AIR 1951 Nag 45 : 1950 NLJ 498 : ILR (1951) Nag 21 : 52 Cr LJ 807.

——Scope of inquiry — Duty of Magistrate — Question of possession and not of title should be decided — Evidence regarding title may however be considered in certain cases.

The duty of a Magistrate in proceedings under S. 145, Criminal P. C., is to ascertain which party was in possession on the relevant date; he is not to decide any question of title at all; and evidence bearing on title can be considered only in two instances, one in which the property in dispute admits of no actual possession, and second, in which the evidence as to possession is equally balanced and the presumption of possession which flows from title can be of help in a correct decision of the question of possession. Case law discussed. (Agarwalla, J.) Mt. Gyan Devi v. Rex.

AIR 1949 All 144 : 1948 AWR (HC) 180 : 50 Cr LJ 209.

——In proceedings under S. 145, the Court can properly consider questions relating to title where such is necessary in order to ascertain who is in possession.

In case of unworked mines, possession is with person who is the owner of the mines. In such a case question of ownership can be considered to see who is in possession of the mines. (Harries, C. J. and Rowland, J.) Ranchi Zamindari Co., Ltd. v. Pratap Udainath Sahi Deo.

AIR 1939 Pat 209 : 40 Cr LJ 631.

CRIMINAL P. C. (V of 1898), S. 145 — 47. Question of title – (b) When may be considered

——Evidence as to possession not satisfactory on either side—Evidence of title, if can be considered for determining the question of possession.

Where in proceedings under S. 145, Criminal P. C., the evidence of possession is not quite satisfactory on either side, a Magistrate can consider evidence of title to supplement the evidence of possession. (Smith, J.) Maharani Jagdamba Devi v. Emperor.

AIR 1937 Oudh 510 : 1937 OWN (CC) 1016 : 10 RO 95 : 171 IC 181 : 38 Cr LJ 1107.

——Questions of title are of little importance under S. 145, Criminal P. C., except in so far as they may be available to show who was in actual physical possession of the land at the time when proceedings were taken. (Lort-Williams and McNair, JJ.) Devendra Nath Khan v. Dhanmoni Dassi.

AIR 1934 Cal 95 : 37 CWN 849 : 6 RC 371 : 147 IC 817 : 35 Cr LJ 489.

——Question as to title— Finding on, when to be given.

The proper place of a finding on matters of title is in a regularly constituted litigation between the parties claiming title and though cases may arise in Criminal Courts where, without deciding a question of title, the matters directly under trial cannot be properly disposed of, it is desirable to limit one's finding as to title in the criminal proceedings to those cases in which a finding is necessary and to those points only which the Court is compelled to determine. (Courtney-Terrell, C. J. and Rowland, J.) Matte Mandal v. Emperor.

AIR 1932 Pat 189 : 13 PLT 193 : Ind Rul (1932) Pat 156 : 137 IC 693 : 33 Cr LJ 509.

——Relevancy of title — Possession — Conflicting evidence.

Where a Judge finds on each side evidence which in itself is reliable and he finds that the evidence on the one side is equally balanced and he is unable to conclude from such evidence which party is in possession, then he is entitled to corroborate the evidence of possession given by one side by the presumption as to possession arising from the title which he has found to be in that side. However, the principle does not apply to a case where the Court has come to the conclusion that the evidence as regards possession is equally unreliable on both sides. (Sanderson, C. J. and Chotzner, J.) Akshoy Kumar v. Brojeswar Ghattak.

AIR 1923 Cal 303 : 26 Cal WN 1000 : 71 IC 365 : 24 Cr LJ 141.

——Relevancy of title—How far can be used.

The Magistrate, cannot, in a proceeding under S. 145 of the Cr. P. Code rely simply on the question of title but he can use the evidence of title to supplement the evidence of possession. (Beachcroft and Ghose, JJ.) Romesh Chandra Sarkar v. Mohim Chandra Guha.

CRIMINAL P. C. (V of 1898), S. 145 — 47. Question of title—(b) When may be considered

AIR 1920 Cal 889 : 61 IC 174 : 22 Cr LJ 350.

——Relevancy of title.

A Magistrate in a proceeding under S. 145 is entitled to look into the question of title only to arrive at a satisfactory conclusion on the question of possession. He has got no power to decide the question of title or to look into it apart from the question of possession. (Sultan Ahmad, J.) Ram Saroop Chowdhry v. Mussamat Darsano Koer.

AIR 1920 Pat 499 : 1 Pat LT 387 : 58 IC 252 : 21 Cr LJ 748.

——Relevancy of title.

Documents showing title to the property should only be utilised for elucidation of the oral evidence and should not by themselves be used for concluding the question as to possession. (Seshagiri Iyer and Moore, JJ.) Srimanavedan Rajah v. Parapravan Naidu.

AIR 1920 Mad 566 : 38 MLJ 73 : 27 MLT 85 : (1920) MWN 133 : 11 LW 285 : 54 IC 254 : 21 Cr LJ 46.

——Duty of Magistrate —Possession— Title may be looked into.

In a proceeding under S. 145 if there is a substantial evidence of possession or a conflict of evidence thereon, the Magistrate is justified in looking into the evidence of title in corroboration of the evidence of possession. (Thornhill, J.) Subh Narayan v. Lachmi Narayan Kuer.

AIR 1918 Pat 650 : 46 IC 301 : 19 Cr LJ 717.

——Purpose for which evidence of title can be considered.

In a proceeding under Ch. XII of the Code of Criminal Procedure, the Magistrate may, if necessary, take and consider evidence of title to enable him to decide the question of actual possession, but such evidence should be used only to "supplement" evidence of user. The Code forbids the use of such evidence to decide the case with reference to the right of the parties possess the subject of the dispute. (Miller, J.) Pananganti Parthasarathy Nayanim Garu v. Pallikapu Venkatasami Reddi.

6 Ind Cas 398 : 8 MLT 104 : 11 Cr LJ 353.

48. "Receive all such evidence as may be produced".

——Ss. 145 (4), 146 — Procedure prescribed by S. 145 (4) must be first exhausted before taking action under S. 146.

The provisions of sub-cl. (4) of S. 145 are imperative. It is not open to the Magistrate to refuse to take evidence on behalf of a party merely on the ground that he was satisfied on the written statements filed by both the parties that a certain conclusion was the correct conclu-

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sion. (Beg, J.) Shiamsundar Lal Jain v. Sheo Prashad.

AIR 1953 All 505 : 1952 AWRHC 672 : 1953 ALJ 67 : 1953 Cr LJ 1169.

——Ss. 145, 203— Evidence recorded in another revenue case pending in Court, if can be considered in S. 145 proceedings.

Section 203, Criminal P. C., has nothing to do with proceedings under S. 145, and where an application is made under S. 145, the Magistrate ought to proceed with the case according to the provisions of S. 145. The only case in which a Magistrate can refuse to take action under S. 145 is when he is not satisfied that there is a danger of a breach of the peace. In case he is satisfied by the Police report that there was danger of a breach of the peace, his duty is to proceed under S. 145, Criminal P. C., and to issue notices to the parties. If notices are issued to the parties and written statements filed by them, it is again his duty under Sub-S. 4 of S. 145 to receive all such evidence as might have been produced by the parties. (Zia-Ul Hasan, J.) Emperor v. Subhan.

AIR 1939 Oudh 15 : 11 RO 104 : 1938 OWN (CC) 1099 : 1938 AWR (CC) 99 : 178 IC 252 : 40 Cr LJ 33.

——It is the duty of the magistrate to decide whether there is likely to be a breach of the peace and whether one party although recently dispossessed, is to be regarded as in possession. To do this he must take such evidence as he finds necessary and it rests with him and not with the parties to decide what evidence is necessary to be called. Recent amendment of cl. (4) does not mean anything more than that he must receive evidence actually put before him by the parties and does not require him to summon witnesses at the instance of the parties who are unable to bring these witnesses to Court. In S. 145 there is no such provision as is to be found in cl. (2) of S. 252. (Mackney, J.) A. Meah v. Steel Brother & Co., Ltd.

AIR 1938 Rang 229 : 39 Cr LJ 708.

(Note:—See however, Sub-S. (9) which was added by the same amendment which amended Sub-S. (4) in 1923.)

——It is incumbent on the Magistrate to receive all such evidence as may be produced by the petitioners. (Lakshmana Rao, J.) Chima Abbu Chettiar v. Abboy Chetti.

1934 MWN 693.

——Parties should be given sufficient time to adduce evidence, proceedings under S. 145, being of quasi-civil nature.

At the moment the case was called on the muktear engaged by the first party was absent; the first party went to fetch him. The Court waited for full 20 minutes and then proceeded to take evidence on behalf of the second party.

Held, that the first party should be given an opportunity of adducing evidence in support of

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his claim, the proceeding under S. 145 being quasi-civil proceeding. (C. C. Ghose and Cuming, JJ.) Bande Ali v. Rajaullah.

AIR 1925 Cal 263 : 76 IC 975 : 25 Cr LJ 303.

——Power of Magistrate—Absence of evidence.

A Magistrate has no jurisdiction to make an order under this section without any evidence being adduced before him. (C. C. Ghose and Cuming, JJ.) Hatemali Chaprasi v. Osimuddi.

AIR 1924 Cal 544 : 73 IC 814 : 24 Cr LJ 702.

——Duty of Magistrate.

It was incumbent on the Magistrate to make the inquiry and to take such evidence as the parties offered irrespective of the fact that one or other of the parties failed to put in a written statement. The Magistrate would not be justified in refusing to proceed with the case because the parties neglected to file a written statement on the date fixed; he has to take evidence if offered by any of the parties and to decide the case upon such evidence. The basis of a proceeding under S. 145, Cr. P. Code is not the written statement but the police report or other information from which the Magistrate is satisfied about the fact of the likelihood of a breach of the peace.

If no written statement is put in, the Magistrate is bound nevertheless to hear the parties and take the evidence produced by them. The non-filing of the written statement does not take away the jurisdiction of the Magistrate to make an order in his favour. (Kulwant Sahay, J.) Mt. Ramjahria v. Piar Koeri.

AIR 1923 Pat 369 : 4 Pat LT 308 : 73 IC 173 : 2 Pat LR 6 (Cr) : 24 Cr LJ 557.

——An inquiry into the question of possession should be as full as that in a summons case entitling each party to adduce evidence. (Jwala Prasad, J.) Khubi Singh v. Darbari Mahton.

AIR 1921 Pat 176 : 2 PLT 267 : 1921 Pat HCC 167 : 22 Cr LJ 481.

——Refusal to examine witnesses—It is failure to exercise jurisdiction—Revision lies. (Jwala Prasad, J.) Biswanath Mahapatra v. Shivanand Saraswati.

AIR 1921 Pat 308 : 2 PLT 330 : 22 Cr LJ 430.

——Rejection of evidence — Jurisdiction — Oral and documentary evidence—Not considered.

A Magistrate fails to exercise his jurisdiction in proceeding under S. 145 if he does not consider both the oral and documentary evidence in the case. A decision based simply upon the consideration of only the oral or the documentary evidence is liable to be set aside. An order under S. 145 based upon it is bad. (Sultan Ahmad, J.) Kailash Behari Lal v. Jai Narain Rai.

AIR 1920 Pat 245 : 1 PLT 291 : (1920) Pat HCC 288 : 57 IC 169 : 21 Cr LJ 601.

——Ss. 145 (4) and 439—Refusal to take oral evidence—Revision—Interference.

The Magistrate inspected the locality and being of opinion that the inspection completely satisfied

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him as to the fact of actual possession of the disputed property, declined to take oral evidence and passed an order after discussing the documentary evidence. Held the Magistrate acted without jurisdiction in refusing to take evidence and the High Court could set aside his order. 36 M. 275, Ref; 31 M. 82, Rel. on. Documents showing title to the property should only be utilised for elucidation of the oral evidence and should not by themselves be used for concluding the question as to possession. (Seshagiri Iyer and Moore, JJ.) Srimanavedan Raju v. Parapravan Naidu.

AIR 1920 Mad 566 : 38 MLJ 73 : 27 MLT 85 : (1920) MWN 133 : 11 LW 285 : 54 IC 254 : 21 Cr LJ 46.

——S. 145 (4)—Refusal to admit evidence— Jurisdiction—Effect.

A Magistrate refusing to admit documents of title, in a proceeding under S. 145 commits an error in the exercise of his jurisdiction. (Jwala Prasad, J.) Dwarka Rai v. Nathuni Koeri.

AIR 1918 Pat 658 : 46 IC 604 : 19 Cr LJ 764.

(See cl. 4 as amended)

——Refusal to look at documents of title before passing orders—If material irregularity—Revision.

The refusal by a Magistrate to look into documentary evidence of title produced by the parties and deciding a case on evidence not of a cogent nature is not such a material irregularity as to be interfered in revision, though the Magistrate would have exercised a wiser discretion if he has passed orders under S. 146. (Chetty, Teunon and Richardson, JJ.) Sajuddi Mandal v. Cork.

AIR 1919 Cal 930 : 22 CWN 499 : 27 CLJ 465 : 46 IC 41 : 19 Cr LJ 681 (SB).

(The magistrate now must receive all such evidence as may be produced—Ed.)

——S. 145 (4) — Order without recording oral evidence.

Where a Magistrate makes an order under S. 145, Cr. P. C., without giving either party an opportunity of adducing oral evidence as to possession the order is liable to be set aside. (Teunon and Newbould, JJ.) Sakhayat Ali v. Alhadi Hazi.

AIR 1918 Cal 94 : 21 CWN 928 : 27 CLJ 88 : 43 IC 332 : 19 Cr LJ 108.

——Duties of Magistrate—Requisites before action is taken under.

Where a Magistrate passed a preliminary order under S. 145 on the report of a Zaildar, the parties having no opportunity of producing their evidence before the Zaildar, the proceedings are void owing to the absence of judicial evidence showing the likelihood of a breach of the peace and that the report of the Zaildar could not be invoked in support of the order. (Shadi Lal, J.) Prem Singh v. Emperor.

AIR 1917 Lah 179 : 25 PWR Cr 1917 : 115 PLR 1917 : 39 IC 805 : 18 Cr LJ 565.

——Refusal to admit evidence.

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The failure of a magistrate to add a person as party to the proceedings does not involve absence of jurisdiction in the magistrate. Clause (4) of the section throws the obligation upon the magistrate to hear parties and whether there is documentary evidence before him or not, the section gives the parties the right to be heard. An order passed otherwise will be set aside. (Atkinson, J.) Jatan Singh v. Dukhial Singh.

AIR 1917 Pat 264 : 1 Pat LW 214 : 38 IC 434 : (1917) Pat 118 : 18 Cr LJ 322.

——S. 145 (4) — Refusal to record evidence — Legality.

Order under S. 145 by Magistrate passed without recording the evidence of petitioners is ultra vires. (Shah Din, J.) Tara Chanda v. Behari Lal.

AIR 1916 Lah 378 : 22 PR (Cr) 1916 : 36 IC 868 : 18 Cr LJ 36.

——Magistrate cannot refuse to examine witnesses except on the ground of delay or vexation—If he does, he fails to exercise jurisdiction. (Seshagiri Iyer, J.) Marudanayakam Pillai v. Moshammanas Rowther.

AIR 1917 Mad 594 : 34 IC 329 : 17 Cr LJ 217.

——Refusal to admit evidence—A Magistrate refusing to make any enquiry under S. 145 after issuing notice to parties—Illegality.

A Magistrate refusing to take evidence and to make any enquiry as to the likelihood of a breach of the peace after he issued notice to the parties, holding that there is a likelihood of a breach of the peace after persuing the police report acts illegally and his action is open to revision by the High Court. 29 M. 561: 18 C. W. N. 94 and 700, Foll. (Kumaraswamy Sastri, J.) Velyauda Kone v. Narayana Kone.

AIR 1916 Mad 917 : 2 LW 1208 : 31 IC 645 : 16 Cr LJ 789.

——S. 145 (4) contemplates that on the date originally fixed, the magistrate should take all the evidence produced before him and decide then and there which of the parties is in actual possession unless the Court thinks it necessary for reasons to require further evidence. (Carnduff and Imam, JJ.) Hari Pada v. Sanyasi Charan Biswas.

17 CWN 144 : 17 CLJ 610 : 18 IC 264 : 14 Cr LJ 40.

——Duties of Magistrate — Order without giving opportunity to produce evidence.

An order under S. 145 without giving the parties an opportunity to produce evidence, and without going into the question of possession, is illegal and must be set aside. (Chamier, J.) Jhabba v. Dalchand.

14 IC 760 : 13 Cr LJ 296 (Pat).

——Notice neither served upon first party in accordance with Sub-S. (3) nor affixed near subject-matter of dispute—Written statement from

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either party not received— No appearance on behalf of first party — No opportunity to cite witnesses or put in any documentary evidence—Only one witness of second party examined— Finding of likelihood of breach of peace — Second party held to be in possession—Proceeding held to be very irregular and set aside. (Rampini and Sharfuddin, JJ.) Ahmad Chowdhry v. Parbati Charan Roy.

35 Cal 774 : 8 CLJ 71 : 12 CWN 848 : 8 Cr LJ 119.

——Ss. 145 (1), (4), 146 — Order without taking evidence—High Court's power of interference.

Where a Magistrate did not receive the evidence produced by a party but passed an order attaching the disputed property under S. 146, on a consideration of the written statements only of the parties. the party whose evidence was not taken is prejudiced and the order should be set aside in revision by the High Court. The magistrate's jurisdiction is affected not only in cases of non-compliance with Sub-S. (1) of S. 145 but also by a contravention of Sub-S. (4). (Stephen and Coxe, JJ.) Kolha Koer v. Muneshwar Tewari.

34 C 840 : 6 Cr LJ 452.

——S. 145 (4)—Refusal by Magistrate to examine witnesses.

Refusal by a Magistrate, in a proceeding under S. 145 to examine some witnesses of the party who were present in Court is in direct contravention of the provisions of law contained in Cl. (4), S. 145 of the Code. The High Court has power to interfere with such an order. (Pratt and Handley, JJ.) Manmatha Nath Mitter v. Baroda Prasad Roy Chowdhry.

31 C 685 : 1 Cr LJ 774.

——A Magistrate, contrary to the express provisions of S. 145 (4) refused to receive evidence of a party, and after considering a decree for possession passed twenty years ago as conclusive evidence of possession passed his final orders.

Held, that the final order passed without taking oral evidence should be set aside. (Pratt and Handley JJ.) Lowsen Santal v. Kali Charan Santal.

8 CWN 719 : 1 Cr LJ 717.

49. Reference to arbitration and compromise.

——Reference to arbitration — (Arbitration Act (1940), S. 20).

The matter under S. 145 cannot properly be referred to arbitration and when the arbitration proves infructuous the Magistrate is bound to follow the procedure laid down under the section. (Thadani, C.J.) Kalikanta Barman v. Rainath Barmon.

AIR 1952 Assam 118 : 1952 Cr LJ 1166.

——Ss. 145 (5) and 561A— Proceedings under S 145 — Compromise— Order under S. 145 (5) — Effect—Subsequent dispossession of party — Jurisdiction of Magistrate to restore possession.

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Where as a result of compromise a proceeding under S. 145, Criminal P. C., is dropped by the Magistrate under S. 145 (5), the Magistrate becomes functus officio and ceases to have any jurisdiction in the matter. Hence if a party who is in possession under the compromise order passed by the Magistrate, is dispossessed by the other party subsequently the Magistrate has no jurisdiction to entertain a petition for restoration of possession filed by the dispossessed party and in the absence of jurisdiction the question of exercising inherent powers under S. 561A, Cr. P. C., does not arise. The remedy of the dispossessed party is to have recourse to such legal remedy as is warranted by law. (Shirpatrao J.) Tippa Reddi v. Gondamma.

AIR 1952 Hyd 53 : ILR (1952) Hyd 60 : 1952 Cr LJ 567.

——Dispute referred to arbitration—Award filed—Procedure to be followed by Magistrate—Magistrate adjourning case for final orders—Party putting up application that he should be allowed to tender evidence and for decision according to law—Duty of Magistrate.

It is a fact that S. 145 contains no reference to arbitration proceedings, but there is nothing in the section to forbid the parties by mutual consent adopting any procedure on which they may agree for the amicable settlement of their dispute. If the dispute is amicably settled and no likelihood of a breach of the peace remains, the Magistrate can act under S. 145 (5) cancelling his previous order and staying all further proceedings; but if he does not do that, the only alternative is to decide the dispute and pass order under S. 145 (6). Such an order must be based on evidence and the Magistrate, before making it, is bound under S. 145 (4) to receive all such evidence as may be produced by the parties. Where the award is the only evidence offered and the only evidence that either party desired to offer up to the date of the Magistrate's final order and the Magistrate does not pass an order either declaring himself satisfied that there was no longer a danger of breach of the peace or treating the award itself as the only evidence tendered and acting on it under S. 145 (4), but before he comes to dispose of the case, a petition asking that evidence should be received and the dispute determined according to law is filed, it becomes his duty to receive such evidence as might be produced, under Sub-S. (4) unless he decides to drop the proceeding under Sub-S. (5). In the face of such an application, he cannot pass orders as if the award was the only piece of evidence tendered by the parties. (Rowland, J.) Sunder Gir Gosain v. Jadunandan Jha.

AIR 1942 Pat 289 : 8 BR 226 : 14 RP 321 : 197 IC 491 : 43 Cr LJ 172.

——Question as to who is in actual possession, if can be referred to arbitration.

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There is no provision in the Criminal P. C. for reference of any matter to arbitration or delegation of its power by a Criminal Court to an arbitrator. The procedure laid down under S. 145 does not contemplate that the question as to who is in actual possession should be delegated even by the consent of the parties, to an arbitrator. The section directs the Magistrate himself to receive the evidence adduced by the parties and, on a consideration thereof, to come to a decision. (Ganga Nath, J.) Ahmad Ullah v. Sriniwas Joshi.

AIR 1941 All 42 : (1940) ALJ 758 : 1940 AWR (HC) 561 : 13 RA 304 : ILR (1941) All 14 : 192 IC 16 : 42 Cr LJ 246.

——It is illegal for the Magistrate drawing proceedings to direct parties to appear before another Magistrate. Illegality cannot be cured. (Chatterji J.) Basudeva Sinha v. Ram Saroop.

24 PLT 326.

——Contesting parties compromise—No danger of breach of peace—Decision cannot be postponed for the benefit of the objector who did not appear in the original proceedings. (Grille, J.) Crown v. Chuni Lal.

1939 NLJ 197.

——Order passed by Magistrate in proceedings under S. 145, in 1923 to the effect that mortgage of disputed property was created in favour of plaintiff—Order based on compromise as contained in statement of parties and incomplete without reference to them—Suit by plaintiff on mortgage subsequent to amendment of section in 1929:

Held, that the order of the Court was excepted from registration without any qualification before the amendment of 1929, and being thus admissible in evidence, could be relied upon by the plaintiff in support of his case. (Venkatasubba Rao and Abdur Rahman JJ.) Pichai Pillai Udayan v. Subbraya Pillai.

AIR 1938 Mad 531 : 47 MLW 435 : (1938) 1 MLJ 536 : 11 RM 487 : 1938 MWN 394 : 178 IC 667.

——Sub-Magistrate cannot depute the investigation under Cl. (1) to any Subordinate Magistrate. (Lakshmana Rao, J.) T. Hanuman Singh v. Venkata Rao.

1934 MWN 687 (2).

——S. 145 (4)—Recording of evidence—Delegation to Subordinate Magistrate—Legality.

A Magistrate holding an enquiry as to possession under S. 145, Cl. 4, Criminal P. C., is bound to take the evidence himself and cannot delegate to a Subordinate Magistrate the duty of recording such evidence. Any order passed by him without himself taking any evidence, and depending solely on the report of the Subordinate Magistrate should be deemed to be one passed without jurisdiction. (Sundaram Chetty, J.) Venkatapati v. Sanyasi Raju.

AIR 1932 Mad 368 : 35 MLW 390 : (1932) MWN 425 : Ind Rul (1932) Mad 496 : 138 IC 68 : 33 Cr LJ 536.

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——Proceedings under S. 145 cannot be compromised nor can they be referred to arbitration.

Proceedings under S. 145 cannot be compromised, nor can they be submitted to arbitration; all that can be done is that there may be an agreement as to the mode of taking evidence as regards actual possession on the date of the preliminary order either by a Commissioner or by arbitrators. Such a Commissioner or arbitrators have no power to decide the case, but can only submit a report, and the Magistrate would then be bound to take that report into consideration before passing an order. It has, however, always to be borne in mind that if the parties come to any agreement with regard to a dispute even an agreement as regards the mode of ascertaining actual possession it at once becomes doubtful whether there is any likelihood of a breach of the peace, and if the Magistrate is satisfied that no likelihood of a breach of the peace exists he should cancel his preliminary order under S. 145 (5). AIR 1924 Pat. 589; 32 Cal. 552; 2 Pat. LJ 83; 15 CWN 568 and AIR 1921 Cal. 637 Ref.; AIR 1923 All. 77 and 7 CWN 461. Dist. (Staples, AJC.) Gangadhu v. Balkrishna.

AIR 1929 Nag. 285 : 121 IC 47 : 1929 Cr C 459 : 31 Cr LJ 191.

——Award can be used to drop proceedings but not to declare possession of any party.

A compromise can only be taken by the Magistrate as evidence for an order to be passed under cl. (5) of S. 145 and cannot possibly be made the basis of an order passed under cl. (6). The rule governs also a case in which an arbitration award is before the Court and where that arbitration refers not to existing and past possession but to future possession after division of the property or alteration of the existing condition. (Adami and Foster, JJ.) Uttim Singh v. Jodhan Rai.

AIR 1924 Pat. 589 : 92 IC 172 : 3 Pat. 288 : 7 PLT 288 : 27 Cr LJ 220.

——Compromise—Effect—Fresh proceedings.

Complainant appeared before the Magistrate with a petition to the effect that the respondent had in violation of the razinama previously filed taken possession of a kotha leasing it out and threatened to use violence. The Magistrate summoned the respondent who appeared and put in a written statement to the effect that the kotha was already in his possession and that there was no apprehension of breach of the peace. The Magistrate then ordered that "till the decision of the Civil case the respondent shall not keep his possession over the property in dispute." Held that the proceedings after the date of the razinama were in continuation of the Order made on that day, and that the second complaint was not treated by the Magistrate as a fresh complaint under S. 145. That being so, there was no grave irregularity in the proceedings or final order of the

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Magistrate. (Zafar Ali, J.) Bawa Bansigir v. Bawa Jamnagir.

AIR 1923 Lah 46 : 69 IC 452 : 23 Cr LJ 724.

——Arbitration—When can be had.

If the parties, to a proceeding under S. 145, privately refer the dispute to arbitration. and accept the award by the arbitrator, the Magistrate would have ground for proceeding under S. 145 (5). Otherwise the Magistrate must himself take the evidence and decide the case himself. (Teunon and Ghosh, JJ.) Jamuna Das Kunwala v. Hanuman Baksh Marwari.

AIR 1921 Cal 637 : 25 CWN 719 : 63 IC 159 : 33 CLJ 338 : 22 Cr LJ 623.

——Arbitration—Whether permissible.

It is not permissible to refer to arbitration the subject matter in a proceeding under Ch X, in respect of a public nuisance in which public interests are involved. (Teunon and Suhrawardy JJ.) Ajit Sheikh v. Jamatulla Tarafdar.

62 IC 335 : 22 Cr LJ 511 (Cal).

——Arbitration—Award—Acceptance of by parties —Order.

Where after the drawing up of proceedings under S. 145, Cr. P. C. the matter is with the consent of parties referred to arbitration and an award is filed and accepted by them, held, that the parties having accepted the award and no evidence having been offered by the party aggrieved by the award the Magistrate acted properly in proceeding upon the basis of the award and not insisting on evidence being adduced which the parties had no desire to offer. (Roe and Jwala Prasad, JJ.) Haldhar Singh v. Bulaki Singh.

AIR 1918 Pat 383 : 3 PLJ 249 : 44 IC 122 : 4 PLW 104 : 19 Cr LJ 266.

——Arbitration—Legality.

A Magistrate acting under S. 145 of the Cr. P. C. has no jurisdiction to refer the dispute to arbitrators and accept their award and his order is liable to be set aside especially where only one of the arbitrators signed the award. 2 Pat. LJ 83; 1 PLJ 336 ; 33 C 552 ; 7 CWN 461. Not foll. (Mullick, J.) Hari Prasad Tewari v. Sewak Das.

AIR 1917 Pat 624 : 1 Pat LW 748 : 40 IC 333 : (1917) Pat 251 : 18 Cr LJ 685.

——Duties of Magistrate—No delegation of Magistrate's duties under the section.

There can be no delegation by a Magistrate of his duties of inquiry under the section to arbitrators even with the parties' consent. 32 C 552, rel on : 7 CWN 461 disappr. (Atkinson, J.) Hamidul Haq v. Atact Hussain.

AIR 1917 Pat 191 : 1 Pat LW 81 : 2 Pat LJ 86 : 37 IC 513 : 18 Cr LJ 145.

——Evidence.

In passing final orders in proceedings under the section the Court is not bound to act on a previous solenamah between the parties which merely

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decided the question of the right to possession but not the possession. (Sharfuddin and Coxe, JJ.) Guru Das Hazra v. G. L. Weatheral.

4 Ind Cas 537 : 13 CWN 601 : 11 Cr LJ 7.

——Arbitration—Section 145 does not contemplate that the question as to who is in actual possession should be delegated, even by the consent of the parties, to arbitrators. The Magistrate himself should receive the evidence adduced and, on a consideration thereof, to come to a decision. (Henderson and Geidt JJ.) Banwari Lall Mukherjee v. Hriday Chakravarti.

32 C 552 : 1 CLJ 432 : 2 Cr LJ 347.

50. Remedy of aggrieved party.

See Note 16—Effect of order under the Section — (f) — Remedy of unsuccessful party.

51. Restoration of possession.

——Ss. 145 & 146 — Scope —Order for restoration of land. See ibid, S. 146.

AIR 1953 Hyd 253 : ILR (1953) Hyd 403 : 1953 Cr LJ 1524.

——S. 145 (6) and Sch. V Form No. 22—Form of order under—Order declaring dispossessed party to be entitled to possession—Order for restoration when can be passed.

If, in a case where the Magistrate proceeds under the first proviso to S. 145 (4), he is minded not only to declare a person, dispossessed within two months, to be entitled to possession but also to restore possession to him, it is not necessary that he must do so by one and the same order and it is open to him to make a second order for restoration of possession on a subsequent date.

There is nothing in S. 145 (6) which makes it mandatory that an order for restoration of possession should form an integral part of the original order and be passed at one and the same time as the original order. The final order would be in the form given in Sch. V, Form 22, which stops at the declaration as to right to possession and the injunction forbidding disturbance of possession but does not incorporate any order for restoration in possession, and later on, when a party is unable to get possession, he can apply to that Court to act under the last part of sub-s. (6) and restore possession to him. It is somewhat of an auxiliary order and if an analogy is permitted in the nature of execution.

The Magistrate is not functus officio, immediately he pronounces the final order in the prescribed form. He can still deal with an application for the auxiliary order of restoration to possession. (Chakravarti & Sinha JJ.) Khudiram Mandal v. Jitendra Nath.

AIR 1952 Cal 713 : 56 CWN 608 : 1952 Cr LJ 1411.

——Finding that S. 145 does not apply — Order restoring possession to parties jointly is not competent. (Harnam Singh, J.) Gainda Lal Sharma v. Bishembar Nath.

AIR 1949 East Punj 231 : 50 Cr LJ 573.

CRIMINAL P. C. (V of 1898), S. 145—51. Restoration of possession

——Power of Magistrate.

In proceedings under S. 145, a Magistrate has no jurisdiction to order restoration of possession.

All that the Magistrate is empowered to do is to declare that a particular party is entitled to possession. At the same time if a party is declared to be entitled to possession and the world at large is forbidden to disturb his possession he would be entitled to take possession and no one would have any right to interfere with his doing so. (Broadway, J.) Bahawala v. Duni Chand.

AIR 1924 Lah 411 : 76 IC 621 : 24 Cr LJ 461.

(See, however, 1923 Amendment—Ed.)

——Ss. 145 and 522—Disposal of property— Magistrate — Placing one in possession by ousting another—Order illegal.

Under S. 145 of the Cr. P. Code, a Magistrate of the first class has no power to oust one person and to place another in possession of a disputed property. A Magistrate has such power under S. 522 of the Code but to give him jurisdiction under that section there should have been a conviction for an offence. (Tudball, J.) Tulshi Ram v. Akbar Ahmad.

AIR 1915 All 377 : 37 All 654 : 13 ALJ 932 : 30 IC 1002 : 16 Cr LJ 714.

(Before Amendment of 1923)

——Order for restitution of property without judicial investigation.

The Magistrate passed an order under section 145 but finding it unnecessary to take further proceedings ordered the restitution of the land to the person who was previously in possession. This was not done after a judicial investigation:

Held, that though the whole procedure was wrong it was unnecessary to interfere as the order had been carried out by placing the land in the possession of such person. (Nanjundayya O. C. J. and Chandrasekhara Aiyar, J.) Puttamadiah v. Subbamma.

12 MCCR 99 : 9 Cr LJ 336.

52. Revision.

(a) After amendment of S. 435 in 1923.

(i) Administrative order.

(ii) Appointment of receiver pending revision.

(iii) Delay.

(iv) Finding as to possession based on evidence.

(v) Finding based on misreading evidence or on no or no inadmissible evidence.

(vi) Forum.

(vii) High Court's power to award costs.

(viii) Orders without jurisdiction and illegal orders.

(ix) Pleas in revision.

(x) Procedural irregularity.

CRIMINAL P. C. (V of 1898), S. 145—52. Revision

(xi) Reference.

(xii) Satisfaction of magistrate.

(xiii) Scope of revisional jurisdiction.

(b) Before amendment of S. 435 in 1923.

(i) Abatement of revision.

(ii) Consequential orders upon revision.

(iii) Evidence, rejection, admission or misreading of.

(iv) Orders without jurisdiction or illegal orders.

See also Note 52 (b) (vi) Revisional jurisdiction of High Court.

(v) Procedural irregularity.

(vi) Revisional jurisdiction of High Court.

(vii) Satisfaction of magistrate.

(c) Letters Patent appeal from orders in revision.

52. **Revision.**

(a) After amendment of S. 435 in 1923.

(i) Administrative order.

(ii) Appointment of receiver pending revision.

(iii) Delay.

(iv) Finding as to possession based on evidence.

(v) Finding based on misreading evidence or on no or on inadmissible evidence.

(vi) Forum.

(vii) High Court's power to award costs.

(viii) Orders without jurisdiction and illegal orders.

(ix) Pleas in revision.

(x) Procedural irregularity.

(xi) Reference.

(xii) Satisfaction of magistrate.

(xiii) Scope of revisional jurisdiction.

52. **Revision—**

(a) After amendment of S. 435 in 1923.

(i) Administrative order.

——S. 145 (4)— Magistrate directing Tahsildar to sell cultivation rights under S. 145 (4) — Sale subsequently set aside by Magistrate — Order setting aside sale by Magistrate being only administrative is not revisable by High Court.

The Sub-Divisional Magistrate attached the lands in dispute under the second proviso to S. 145 (4) and directed the Tahsildar to sell the cultivation rights by public auction, which were accordingly sold. Subsequently, on a complaint the Sub-Divisional Magistrate cancelled the sale and directed the cultivation rights to be given to various persons. The order was sought to be revised:

CRIMINAL P. C. (V of 1898), S. 145 — 52. Revision —(a) After amendment of S. 435 in 1923

Held that the Tahsildar who was directed to sell cultivation rights, was only an agent of the Magistrate and the directions given to him were merely administrative orders which could be varied by the Sub-Divisional Magistrate. As the order setting aside the sale passed by the Sub-Divisional Magistrate was only an administrative one, no revision lay and the High Court could not interfere. (Govinda Menon, J.) Zamindar of Devarakota v. Ramaswamy.

AIR 1948 Mad 234 : 60 MLW 748 : 1947-2 MLJ 459 : 1948 MWN 59 (2) : 49 Cr LJ 456.

52. Revision—

(a) After amendment of S. 435 in 1923.

(ii) Appointment of receiver pending revision.

——The High Court has no power to appoint a receiver pending disposal of the revision application referred against an order passed under S. 145: AIR 1926 Mad 139, Foll. (Yahya Ali, J.) Munia Servai v. Thangayya Onturiyar.

AIR 1948 Mad 133 : 1947-1 MLJ 171 : 60 MLW 171 : 1947 MWN 159 : 1947 AWR Sup 41 : 1947 OA Sup 41 : 49 Cr LJ 113.

——The High Court has no power to appoint a receiver pending disposal of a petition to revise an order passed under S. 145. (Devadoss and Wallace, JJ.) Marudayya Thevar v. Shanmuga Sundara Thevar.

AIR 1926 Mad 139 : 91 IC 702 : 22 MLW 723 : 1925 MWN 772 : 49 MLJ 593 : 27 Cr LJ 126.

52. Revision—

(a) After amendment of S. 435 in 1923.

(iii) Delay.

——Final order—Effect

Where one of the parties to a proceeding under S. 145 waits for a year and allows the order initiating the proceedings to go unchallenged so long, it cannot subsequently be heard to complain of excess of jurisdiction because the final order has gone against it and claim as a matter of right that the proceedings should be quashed. (Manohar Lall and Chatterji, JJ.) Shibnarayan Dass v. Satyadeo Prasad.

AIR 1943 Pat 44 : 44 Cr LJ 25.

52. Revision—

(a) After amendment of S. 435 in 1923.

(iv) Finding as to possession based on evidence.

——Ss. 145, 439— Finding of fact.

The High Court seldom interferes on facts with an order passed under Ss. 145 and 146. (Balakrishnaiya, J.) Subba Rao v. B. Venkata Rao.

AIR 1953 Mys 27 : ILR (1953) Mys 309 : 1953 Cr LJ 644.

——Ss. 145 (6) and 439—Question as to which party is in possession on date of dispossession—Question is one of fact—Finding thereon will not be disturbed in revision. (Chaturvedi, J.) Ratan Singh v. Raghubir Singh.

CRIMINAL P. C. (V of 1898), S. 145 — 52. Revision —(a) After amendment of S. 435 in 1923

AIR 1952 Madh B 165 : 1952 Cr LJ 1449.

——Ss. 145, 439—Finding as to possession—It is for Magistrate to decide which party was in possession at the material date—Finding based on evidence and justified by material on record is not without jurisdiction—High Court cannot interfere with finding in revision.

In a proceeding under S. 145, Criminal P. C., it is for the Magistrate to decide which party was in possession at the date of the initial order, and if the finding of the Magistrate as to possession is based on evidence and there was material before him on which he could come to such a finding, he is the only Judge as to whether the material was sufficient or not, and if, upon the material placed before him, he is satisfied that one of the parties is in possession, his order cannot be deemed to be without jurisdiction, and cannot be interfered with by the High Court in revision. It is only if the finding of the Magistrate as to possession is based on no material at all that the High Court can interfere with his order on revision : 12 OC 400; AIR 1918 Pat 228; AIR 1915 Cal 644 and 93 IC 695 (Lah), Rel. on. (Achhru Ram, J.) Wazir Chand v. Rawel Chand.

AIR 1947 Lah 227 : 48 PLR 499 : 48 Cr LJ 844.

——Possession—Finding of trial Court, finality of.

The duty of weighing evidence regarding possession in proceeding under S. 145, Criminal P. C., is reserved purely for the trial Court and the finding of the trial Court is not open to interference in revision unless it is vitiated by error of law. (Misra, J.) Mahadeo Prasad v. Ram Saran.

AIR 1945 Oudh 12 : 1944 OWN (CC) 287 : 1944 AWR (CC) 196 : 220 IC 418 : 46 Cr LJ 680.

——Failure of justice.

Where, in proceedings under S. 145, Criminal P. C., the only possession claimed by a party is that of his tenant and admits that he is not in actual possession, a refusal by the Magistrate to take further evidence cannot be said to have resulted in failure of justice to the party and the order passed by him will not be open to revision. (Pandrang Row J.) Penumatsa Ranga v. Zamindar, Gazzavaram.

AIR 1938 Mad 654 : 1938 MWN 252 : 47 MLW 340 : (1938) 1 MLJ 453 : 11 RM 346 : 177 IC 584 : 39 Cr LJ 922.

——Ss. 145, 439—Magistrate arriving at conclusion after due inquiry—Findings of fact, if can be impugned in revision.

Where in a case under S. 145, Criminal P. C., after due enquiry, the Magistrate, upon the evidence on the record, arrived at the conclusion that both parties were in joint possession of the grove in dispute and in revision, the Sessions Judge referred the case to the High Court to set aside the order of the Magistrate and remand the case for trial de novo :

CRIMINAL P. C. (V of 1898), S. 145 — 52. Revision —(a) After amendment of S. 435 in 1923

Held, that no question of law was involved in the revision and that the order of the Magistrate was perfectly legal, and his finding of fact could not be impugned by any party in revision. (Nanavutty, J.) Ram Saroop v. Khurram Singh.

AIR 1934 Oudh 158 (1) : 11 OWN (CC) 375 : 6 RO 613 : 150 IC 143 : 35 Cr LJ 1056 (1).

——The undefined character of the area of the land in question and the consequent difficulty experienced in settling the exact location thereof had presented an insuperable obstacle in the way of the Magistrate's arriving at a definite conclusion in regard to possession.

Held, that there is no good ground for interfering with the order of the Magistrate. (Kolhatkar, AJC.) Jan Mahomed v. Jivan Khan.

AIR 1928 Nag 325 : 111 IC 445 : 11 AI Cr R 194 : 29 Cr LJ 861.

——The High Court as a Court of revision cannot interfere with the decision of the trial Court, on the factum of possession as long as there is evidence in support of that finding. 14 OC 400; 28 IC 651 and 43 IC 401, Ref. (Shadi Lal, C. J.) Abdul Satar v. Udha Lal.

93 IC 695 : 8 LLJ 47 : 27 PLR 102 : 27 Cr LJ 471.

52. Revision—

(a) After amendment of S. 435 in 1923—

(v) Finding based on misreading evidence or on no or on inadmissible evidence.

——Preliminary order based on inadmissible evidence — Order set aside in revision. See ibid, S. 439.

AIR 1953 All 371 : 1953 Cr LJ 794.

——High Court will not ordinarily interfere with orders under S. 145—Finding as to possession given without sufficient material on the record to justify it—High Court will set aside order and return case for fresh decision after allowing parties to adduce further evidence. (Hemeon Ag. CJ.) Onkarprasad v. Beniprasad.

AIR 1951 Nag 45 : 1950 NLJ 498 : ILR (1951) Nag 21 : 52 Cr LJ 807.

——Order under—Revision—Finding as to question of possession greatly influenced by question of title—Finding cannot be accepted.

Ordinarily findings of fact in a proceeding under S. 145 are not to be disturbed. But where in a case in which there could be no doubt as to who was in actual possession of the house in dispute within two months of the order under S. 145 (1) the Magistrate while considering the question of possession is much influenced by the question of title, his finding cannot be accepted. (Agarwalla J.) Mt. Gyan Devi v. Rex.

AIR 1949 All 144 : 1948 All WRHC 180 : 50 Cr LJ 209.

——Misreading and relying upon faulty documents —Serious error of record.

CRIMINAL P. C. (V of 1898), S. 145 — 52. Revision —(a) After amendment of S. 435 in 1923

Where it is found that certain references as to possession in documents relied upon by the Magistrate are completely wrong and do not refer to the property in dispute and the Magistrate has misread those documents, the Magistrate commits a serious error of record in misreading and relying upon such documents and his finding cannot be held as good in law. (Ray, J.) Dularo Kumar v. Subans Kumar.

AIR 1947 Pat 175 : 231 IC 90 : 13 BR 539 : 1946 PWN 278 : 48 Cr LJ 683.

——Order of remand directing to come to finding on evidence already on record or on taking further evidence—Omission of Magistrate to consider evidence already on record—Magistrate commits serious error.

Where an order of remand does not direct the Magistrate to reject the evidence that is already on record, but, on the contrary, he is directed to come to a finding either on reference to the evidence already on record or on such evidence along with such further evidence as the parties might be given opportunity to adduce and might adduce, the Magistrate, by not taking into consideration the evidence which is already on record, commits a serious error and his finding cannot be accepted as correct. (Ray, J.) Dularo v. Subans Kumar.

AIR 1947 Pat 175 : 231 IC 90 : 13 BR 539 : 1946 PWN 278 : 48 Cr LJ 683.

——Ss. 145, 439—Finding on point of possession contrary to prior Civil Court adjudication—Interference by High Court in revision—Propriety of.

Finding of a Magistrate on the point of possession is a finding of fact with which the High Court ordinarily refuses to interfere; but where there are certain circumstances which completely vitiate the findings of the Magistrate in that he does not keep in view that it is the bounden duty of a Criminal Court to obey the orders of the Civil Court and to respect the dakhaldehani given by the Civil Courts, the High Court will interfere even though the Magistrate does not commit any error of jurisdiction. (Manohar Lall, J.) Bahali Singh v. Safayat Gop.

AIR 1938 Pat 105 : 10 RP 449 : 4 BR 385 : 173 IC 756 : 39 Cr LJ 379.

——Proceedings under S. 145.

A High Court cannot ordinarily interfere in revision under Ss. 435 and 439 of the Cr. P. Code with proceedings under Chap. XII of the Code unless the Subordinate Court has passed an order without giving the parties an opportunity of calling evidence, and has thus acted without jurisdiction. 34 C. 840, Foll. (Prideaux, AJC.) Jaiwanti v. Ramrao.

48 IC 987 : 20 Cr LJ 107 (Nag).

52. Revision—

(a) After amendment of S. 435 in 1923—

(vi) Forum.

CRIMINAL P. C. (V of 1898), S. 145—52. Revision—
(a) After amendme t of S. 435 in 1923
——Ss. 145 and 435—Revision of order under Chap. XII— Direct petition to High Court.

The High Court should not ordinarily entertain petitions of revision of an order under Chap. XII, Criminal P. C., unless the lower Court has been moved in the first instance though it should not hesitate to do so if extraordinary and special circumstances are shown to exist which justify departure from the normal course. (Ram Labhaya J.) Gobardhandas v. Chaturbhuj.

AIR 1950 Assam 165 : ILR (1951) 3 Assam 52.

——Where an application has been filed against an order of a Magistrate declaring certain persons to be in possession of certain property under S. 145.

Held, that the High Court should not entertain the application, as the Sessions Judge has, under Ss. 435 to 438, concurrent jurisdiction in the matter. The application should first be made in the Court of the Sessions Judge. 36 Cal 643; 48 Cal 534 and 3 Pat LJ 302, Rel on. (Findlay, Offg. JC.) Bajirao v. Mt. Dadibai.

AIR 1926 Nag 285 : 91 IC 247 : 27 Cr LJ 71.

52. Revision—

(a) After amendment of S. 435 in 1923—

(vii) High Court's power to award costs.

——Costs.

It is competent to the High Court in its Criminal revisional jurisdiction to award costs of the revisional proceedings under S. 145. (Fawcett and Madgavkar, JJ.) Bai Jiba v. Chandulal.

AIR 1926 Bom 91 : 94 IC 709 : 27 Bom LR 1353: 27 Cr LJ 661.

——Costs.

The High Court has no power to award costs incurred before it on the hearing of a Criminal Revision against an order passed under Chap. XII (Ss. 145—148). AIR 1922 Mad 502 (FB) Followed. (Spencer Offg. C. J. ; Kumaraswami Sastri and Krishnan, JJ.) Veerappa Naidu v. Abudayammal.

AIR 1925 Mad 438 : 48 Mad 262 : 21 MLW 688 : 48 MLJ 106 : 86 IC 147 : 26 Cr LJ 707 (FB).

52. Revision—

(a) After amendment of S. 435 in 1923—

(viii) Orders without jurisdiction and illegal orders.

——Where the order inititing the proceedings under S. 145 is to be found as not merely an irregularity but a clear case of illegality affecting the jurisdiction of the Magistrate and going to the very root of the powers of the Magistrate having seisin over disputes regarding immovable properties, the point can be taken even at the revision stage. (Mohapatra, J.) Kshetromoni Panda v. Raghunath Patnaik.

AIR 1953 Orissa 255 : 19 Cut LT 139 : ILR (1953) Cut 333 : 1953 Cr LJ 1499.

CRIMINAL P. C. (V of 1898), S. 145—52. Revision—
(a) After amendment of S. 435 in 1923
——Magistrate's order in excess of proceedings in respect of distinguishable lands—Legality.

Where it is impossible to be sure with regard to any of the really contested area whether that was included within the proceedings or not, the whole order of the Magistrate passed under S. 145 should be set aside. But it cannot be accepted as an absolute proposition of law that where the lands are distinguishable and the evidence of possession adduced in relation to them are also easily separable, they being of a different character, the Magistrate's order with regard to the other lands in respect of which possession has been found with party and which has really come within the ambit of the proceedings will not be sustained. In such a case, the order must be vacated to the extent to which it is in excess of the proceedings in respect of the disputed lands. (Ray, J.) Dularo Kumar v. Subans Kumar.

AIR 1947 Pat 175 : 231 IC 90 : 13 BR 539 : 1946 PWN 278 : 48 Cr LJ 683.

——Ss. 145, 439, 435—Possession delivered by Civil Court in favour of one party—Magistrate, held had power to draw up proceeding under S. 145 and decide that opposite party was not dispossessed by delivery of possession—Such decision, further held not without jurisdiction though wrong and High Court will interfere with it if it was grossly erroneous. (Rowland, J.) Raj Nandan v. Chedi Thakur.

AIR 1932 Pat 185 : 13 PLT 178 : Ind Rul (1933) Pat 117 : 142 IC 157 : 34 Cr LJ 259.

——Absence of jurisdiction.

Where the order is ultra vires and without jurisdiction, for example, where the action taken professedly under Chap. XII really does not fall within the jurisdiction granted thereunder a revision will lie, but not otherwise. (Wazir Hasan, AJC.) Hiralal v. Emperor.

AIR 1924 Oudh 331 : 11 OLJ 59 : 77 IC 728 : 25 Cr LJ 440.

——No order under S. 145 (1).

Omission to pass order under S. 145 (1) is not a mere technical defect. S. 435 (3) does not preclude the High Court from interfering in revision in such a case. (Martineau, J.) Hakam v. Relia Ram.

AIR 1924 Lah 91 : 4 Lah 66 : 24 Cr LJ 751.

——Possession at the date of the preliminary order —Failure of the Magistrate to decide—Action is without jurisdiction—High Court will interfere. (Venkatasubbarao, J.) Peria Subba Goundan v. Subbaiyya Goundan.

AIR 1923 Mad 145 : 16 LW 701 : 45 MLJ 56 : 23 Cr LJ 670.

52. Revision—

(a) After amendment of S. 435 in 1923—

(ix) Pleas in revision.

——Plea in lower Court that there was apprehension of breach of peace—Contrary plea in revision

CRIMINAL P. C. (V of 1898), S. 145—52. Revision—
(a) After amendment of S. 435 in 1923
should not be allowed except in rare cases. (Suryanarayana Rao, J.) Hanumantha v. Hanifabi.

AIR 1953 Hyd 185 : ILR (1952) Hyd 346 : 1953 Cr LJ 1114.

52. Revision—

(a) After amendment of S. 435 in 1923—

(x) Procedural irregularity.

——Subsequent action of the Magistrate after his being satisfied regarding the existence of dispute, relates to procedure and not to jurisdiction and in this aspect is not liable to be upset on revision by the High Court. (Ram Lall, J.) Gurditta v. Taja.

AIR 1939 Lah 108 : 40 Cr LJ 519.

——It cannot be laid down that in every case, it is the duty of the Magistrate to issue process to summon any witness whom the party wishes to call. In petty cases it is in the discretion of the Magistrate. There is no general duty upon a Court in any proceeding to issue process to compel the attendance of witnesses. Special rules are laid down according to the nature of the enquiry with which the Magistrate is dealing. The question before the Court of Revision is whether any serious and substantial injustice has been done to the applicants. If none has happened, the Court will not interfere. (Allsop, J.) Kunj Behari v. Emperor.

AIR 1936 All 322 : 58 All 920 : 1936 ALJ 370 : 8 RA 892 : 1936 AWR 439 : 162 IC 736 : 37 Cr LJ 694.

——A Court of Revision is absolutely prohibited from setting aside an order under S. 145, Criminal P. C., on account of any omission or irregularity in the proceedings unless such omission or irregularity has occasioned a failure of justice. (King and Thom, JJ.) Bramha Singh v. Emperor.

AIR 1932 All 681 : 54 All 1002 : 34 Cr LJ 425.

——Necessary party not asked to file written statement—No specific statement as to danger of breach of peace. Proceedings will be set aside in revision. (Dalal, J. C.) Ram Bushan Das v. Ram Lakhan Sahu.

AIR 1925 Oudh 484 : 85 IC 918 : 26 Cr LJ 630.

——Refusing to admit written statement filed by claimants in proceedings under S. 145 is revisable as the effect of it will be that the Magistrate's decision under S. 145 will not be binding on the parties whose written statement Magistrate had refused to admit. (Jwala Prasad, J.) Raghunath Kuer v. Raj Kishore Kuer.

AIR 1924 Pat 783 : 81 IC 442 : 5 PLT 458 : 25 Cr LJ 906.

52. Revision—

(a) After amendment of S. 435 in 1923—

(xi) Reference.

CRIMINAL P. C. (V of 1898), S. 145—52. Revision—
(a) After amendment of S. 435 in 1923
——Ss. 145, 435, 438—Jurisdiction of District Magistrate with regard to order passed under S. 145 by Magistrate subordinate to him—Nature of—Procedure, where he thinks interference necessary.

The jurisdiction of the District Magistrate with regard to orders passed by Magistrate subordinate to him, under S. 145, Criminal P. C., is not appellate jurisdiction. He has not even power to revise the order himself. All he can do is to call for the record of the case under S. 435 and, if he considers that the order should be interfered with, his duty is to refer it to the High Court under S. 438. (Agarwala, J.) Luti Singh v. Ramkirit Singh.

AIR 1941 Pat 105 : 7 BR 492 : 13 RP 569 : 192 IC 784 : 42 Cr LJ 340.

——Ss. 145, 438—Case under S. 145—Mere error of law, whether ground for reference.

The practice as regards reference in a case under S. 145, Criminal P. C., is exactly the same as the practice in any ordinary case, and there ought to be no reference merely upon difference of opinion as to the value of evidence. Even if there should appear error of law, reference should not be made unless it appears that the error of law is of such a character as to call for interference by higher authority.

In making a reference under S. 438, referring Courts must always bear in mind the limits which the High Court has in practice put upon its own discretion, and they should not make a reference where the only objection is to the findings of the Court below upon the merits.

It is not the rule of the Court to interfere with decision on facts upon evidence except for special reasons and moreover, the referring Courts should make their references in the form prescribed; they should state in what particular portion of the order the Court making the reference consider an error on a point of law to exist. (Sir George Claus Rankin, C. J. and Graham J.) Fakirchand Mondal v. Madar Mandal.

AIR 1931 Cal 619 : 58 Cal 1081 : 35 CWN 374 : Ind Rul (1931) Cal 915 : 134 IC 915 : 32 Cr LJ 1237.

——A reference asking to confirm a part of the order under S. 145 and quash the rest is not in proper form. (Chotzner and Duval, JJ.) Collector of Howrah v. Santak Das.

AIR 1927 Cal 261 : 99 IC 1010 : 44 CLJ 593 : 7 AI Cr R 383 : 28 Cr LJ 210.

52. Revision—

(a) After amendment of S. 435 in 1923—

(xii) Satisfaction of Magistrate.

——Finding that there was danger of breach of peace—Sufficiency of material cannot be agitated in revision. (Beg, J.) Nageshwar Singh v. State.

AIR 1953 All 471 : 1952 ALJ 441 : 1953 Cr LJ 1056.

CRIMINAL P. C. (V of 1898), S. 145—52. Revision—
(a) After amendment of S. 435 in 1923

——So long as there is any material which can be legally considered for the purpose of forming an opinion as to whether there is any danger of a breach of the peace, the High Court will not go into the question of its sufficiency. (Sharma, J.) Bage Khan v. Baga Ram.

1953 Raj LW 516.

——Magistrate holding that there is no apprehension of breach of the peace and dropping proceedings — High Court will not highly interfere in revision. (Ramaswamy, J.) Velur Devasthanam by its head clerk R. Ramaswami Pillai v. Sambandamurthi Nainar.

AIR 1952 Mad 531 : 1952 MWN Cr 1 : 1952 MWN 53 : (1952) 1 MLJ 161 : 1952 AWR (Sup) 28: 65 MLW 441 : 1952 Cr LJ 1145.

——Ss. 145, 435, 439—Interference in revision.

The High Court does not interfere in revision with the order made by a Magistrate under S. 145 where from the evidence, however meagre, he is satisfied as to there being a likelihood of a breach of the peace; but where the order is based on no evidence or material at all, it must be held to have been arbitrarily made and must be revised. (Kesho Ram Passey, J.) Richhpal v. L. Ram Saran Dass.

3 Pepsu LR 71.

——Finding as to breach of peace.

Finding under S.145 that there did exist danger of a breach of the peace is finding of fact and cannot be interfered with in revision specially when there is evidence, though meagre, to arrive at such finding. (Kaul, J.) Qamaruddin Husain v. Mushtaq Ahmad.

AIR 1949 All 616 : 50 Cr LJ 929.

——Ss. 145, 439—Likelihood of breach of peace—Decision as to, by Magistrate—High Court cannot interfere.

It is the Magistrate alone who is to be satisfied as to there being or not being likelihood of a breach of the peace and if he is satisfied one way or the other, the High Court on revision cannot interfere with his decision: AIR 1939 Lah 108 and AIR 1943 Pat 44, Rel. on. (Achhru Ram, J.) Wazir Chand v. Rawel Chand.

AIR 1947 Lah 227 : 48 PLR 499 : 48 Cr LJ 844.

——High Court's interference.

Whether the materials on record, to justify the initiation of proceedings under S. 145, are sufficient or not is entirely for the consideration of the Magistrate. The High Court cannot go into the sufficiency or otherwise of those materials. The Magistrate being responsible for peace and order his discretion to institute a proceeding under S. 145, should be unfettered, provided he has before him material, however slight, for his being satisfied as to the existence of a dispute likely to cause a breach of the peace. (Manohar Lall and

CRIMINAL P. C. (V of 1898), S. 145—52. Revision—
(a) After amendment of S. 435 in 1923

Chatterji, JJ.) Shibnarayan Das v. Satyadeo Prasad.

AIR 1943 Pat 44 : 9 BR 73 : 15 RP 168 : 203 IC 275 : 44 Cr LJ 25.

——Findings as to existence of dispute.

The High Court will not interfere lightly with the finding of a Magistrate when it is based on evidence and the duty of weighing evidence is one purely for the trial Court. (Ram Lall, J.) Gurditta v. Taja.

AIR 1939 Lah 108 : 40 Cr LJ 519.

——Likelihood of breach of peace—Question of fact—High Court, if should go into the question.

Where the Magistrate has satisfied himself as to whether there was a likelihood of breach of peace after due inquiry, it is not necessary for the High Court to go into that question of fact. (Staples, A. J. C.) Emperor v. Narsingdas.

AIR 1934 Nag. 112 : 7 RN 60 : 30 NLR 311 : 151 IC 348 : 35 Cr LJ 1381.

——Where the Magistrate dismisses a complaint under S. 145 upon perusal of the report made by the police officer that no likelihood of a breach of the peace exists, his order cannot be set aside in revision. (Nanavutti, J.) Ram Manorath Das v. Kaushall Kishore.

AIR 1933 Oudh 253 : 34 Cr LJ 934 (1).

——Attachment—Revision.

Where a Magistrate considers a case to be one of emergency and orders attachment, the matter being one within his discretion, the action taken by him for maintenance of peace cannot be lightly interfered with. (Bhide, J.) Prem Kaur v. Benarsi Das.

AIR 1933 Lah 409 : 34 Cr LJ 342.

——Applicant's statement on oath, whether sufficient to make preliminary order.

The statement of the applicant on oath is sufficient to justify a Magistrate in making a preliminary order under S. 145 (1), Criminal P. C. and the High Court will not quash an order in revision before the inquiry under S. 145 has been held on the mere ground that it was based on the applicant's statement alone without any other materials. (Dunkley, J.) Pyinnya v. U Vilatha.

AIR 1931 Rang 51 (2) : Ind Rul (1931) Rang 127 : 131 IC 63 : 32 Cr LJ 637 (1).

——Where the Magistrate had gone at length into the question of ownership and his order was further unsatisfactory, in that it did not explain how a breach of the peace was to be apprehended between the parties.

Held, that the order should be set aside. (Campbell,, J.) Amir Hasan v. Rodar Bakhsh.

AIR 1927 Lah 822 : 100 IC 712 : 28 PLR 107 : 7 AI Cr R 269 : 28 Cr LJ 328.

——Absence of finding.

——Interference by High Court is not necessary when the Magistrate did not make it clear in his order that there would be breach of peace.

CRIMINAL P. C. (V of 1898), S. 145—52. Revision—
(a) After amendment of S. 435 in 1923

Where there was evidence that both parties were attempting to cultivate the land, the sowings of one party having been ploughed up by the other.

Held, that this was likely to cause a breach of peace, and the mere fact that the Magistrate had not made this clear in his order did not justify the High Court in interfering in revision. 12 CPLR Cr 2, Ref (Baker, JC.) Ramachandra v. Ganpat.

AIR 1925 Nag 448 : 87 IC 923 : 26 Cr LJ 1035.

——Absence of reasons for decision vitiates the order.

Where the order of the Magistrate did not show how he approached the question or how he had considered the evidence in coming to his conclusion, the High Court ordered that the case be reopened from the point reached on the date of the order and that after hearing the parties afresh and recording statement of reasons for the decision the Magistrate should dispose of the matter. (Greaves and Panton, JJ.) Motaherali Jamadar v. Eshaque Sikdar.

AIR 1924 Cal 848 : 81 IC 939 : 39 CLJ 366 : 25 Cr LJ 1115.

52. Revision—

(a) After amendment of S. 435 in 1923.

(xiii) Scope of revisional jurisdiction.

——Ss. 145, 439—Interference in revision.

In revisions preferred against an order under S. 145, Cr. P. C., the High Court rarely interferes with findings of fact arrived at by the Magistrate on enquiry. (A. Srinivasachari, J.) Abdullah v. Hanmanthappa.

AIR 1953 Hyd 286 : ILR (1953) Hyd 173 : 1953 Cr LJ 1862.

——Ss. 145 and 439.

Order under S. 145, will be revised by High Court only on very strong grounds. (Agarwala, J.) Mukhram v. State.

AIR 1953 All 618 : 1951 ALJ 653 : 1953 Cr LJ 1422.

——The High Court seldom interferes on facts with an order passed under sections 145 and 146. (Balakrishnaiya, J.) Subba Rao v. Venkata Rao.

AIR 1953 Mys 27 : ILR (1953) Mys 309 : 1953 Cr LJ 644.

——Sessions Judge acting under S. 435 calling for records of proceedings under S. 145— He has no jurisdiction to suspend order for possession passed by magistrate—Neither can he evict party put in possession and put the other in possession.

See ibid, S. 435.

AIR 1949 Cal 241 : 50 Cr LJ 471.

——Revision—Evidence cannot be gone into.

As a rule of practice the High Court will not go into the evidence in revision in matters under S. 145, unless it is necessary to do so by reason

CRIMINAL P. C. (V of 1898), S. 145—52. Revision—
(a) After amendment of S. 435 in 1923

of special circumstances or by reason of the character of the error of law. (Dhavle, J.) Gobardhan Das v. Suresh Chandra.

AIR 1942 Pat 489 : 9 BR 91 : 15 RP 180 : 203 IC 521 : 44 Cr LJ 95.

——Ss. 145, 147, 435 — Revisional power of High Court over proceedings under Ss. 145, 147.

With the deletion in 1923 of Sub-S. (3) of S. 435, Criminal P. C., the High Court has full revisional power over proceedings under Ss. 145 and 147 and though even now the High Court will be slow to interfere with a real exercise of discretion by the lower Courts, there can be no hesitation in interfering in revision when no discretion has been exercised at all, or when, what discretion has been exercised, has been exercised on wrong principles altogether. (Dhavle, J.) Kunjo Mandal v. Sarju Ram Marwari.

AIR 1939 Pat 206 : 5 BR 539 : 20 PLT 164 : 11 RP 573 : 181 IC 176 : 40 Cr LJ 538.

——Interference on merits.

The High Court does not interfere in revision with orders under S. 145, Criminal P. C., on the merits, as a rule. (Dhavle J.) Babu Ram v. Shymdeo Narayan.

AIR 1939 Pat 187 : 5 BR 246 : 11 RP 390 : 179 IC 548 : 40 Cr LJ 220.

——Interference by High Court—Considerations.

It is the practice of the Sind Judicial Commissioner's Court that it will not interfere with proceedings of Magistrates under Chap. XII, Criminal P. C., in which S. 145 comes merely because the Judges would have exercised their discretion differently upon the facts, because proceedings under this Chapter are proceedings only of a quasi-judicial nature. They are temporary and emergent in their nature, and Magistrates on the spot are in a better position to judge of the true state of affairs than Judges in Courts many miles away. But where it is shown that there is not upon the record material on which the Magistrate could properly have exercised jurisdiction, then the Judicial Commissioner's Court will interfere. (Davis, J. C. and Lobo, A. J. C.) Muhammad Araf v. Satramdas Sakhimal.

AIR 1936 Sind 143 : 9 RS 60 (2) : 164 IC 969 : 37 Cr LJ 1030.

——Ss. 145, 146—No question of law involved in case—Reasons of Magistrate on facts not unsound or untenable—Interference by High Court— Propriety of.

It is seldom that the High Court interferes on facts with an order passed under Ss. 145 and 146, Criminal P. C. When no question of law is involved in a case and even on facts it cannot be held that the reasons given by the

CRIMINAL P. C. (V of 1898), S. 145—52. Revision—
(a) After amendment of S. 435 in 1923

Magistrate are entirely unsound and untenable the High Court will not interfere. (Mohammad Noor, J.) Saudi Mahto v. Sukhlal Mahto.

AIR 1934 Pat 33 : 6 RP 426 : 148 IC 198 : 35 Cr LJ 611.

——Interference in revision is a matter which will be undertaken or left open upon a consideration of the character of the case as a whole and in detail and even though High Court has very wide revisional powers, not being confined to matters of law alone, it will not go into evidence unless it is necessary to do so by reason of special circumstances or by reason of the character of the error of law. There must appear, on the face of the judgment or of the order complained of or of the record, some ground —which need not always be a ground of law—to induce the High Court to think that the evidence ought to be examined in order to see whether there has been a miscarriage of justice. (Sir George Claus Rankin, C. J. and Graham, J.) Fakirchand Mondal v. Madar Mandal.

AIR 1931 Cal 619 : 58 Cal 1081 : Ind Rul (1931) Cal 915 : 35 CWN 374 : 134 IC 915 : 32 Cr LJ 1237.

——In order to interfere with the order under S. 145 putting one party in possession of certain property, the Magistrate must have acted illegally or in an irregular manner. (Pullan, J.) Balbhaddar Singh v. Aditya Prasad.

AIR 1929 Oudh 82 : 114 IC 810 : 6 OWN 17 : 30 Cr LJ 381.

——It is not the duty of the High Court in a reference made by the Sessions Judge against an order of the Sub-Divisional Officer under S. 145, to examine the evidence to consider whether it might have come to a different finding. (Allanson, J.) Mt. Gomia v. Nankhoo Singh.

AIR 1928 Pat 88 : 105 IC 229 : 9 PLT 18 : 28 Cr LJ 901.

——Finding of fact under S. 147 cannot be traversed by revisional proceedings, and as indicated by Sub-S. (4) the aggrieved party should seek his remedy in the Civil Court. (Jackson, J.) Kazi Mahomed Khan, In re.

AIR 1926 Mad 154 : 22 MLW 831.

——If a declaratory order is passed under S. 145 (6) the order can be revised, but if the Magistrate on the facts refuses to proceed under S. 145, such order cannot be revised. (Kennedy, J. C. and DeSouza, A. J. C.) Moolyamal Topandas v. Ali Mahomed Jadow.

AIR 1926 Sind 85 : 89 IC 309 : 18 SLR 278 : 26 Cr LJ 1333.

52. **Revision—**
(b) Before amendment of S. 435 in 1923—
(i) Abatement of revision.
(ii) Consequential orders upon revision.
(iii) Evidence, rejection, admission or misreading of.

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(iv) Orders without jurisdiction or illegal orders. See also N. 52 (b) (vi) Revisional jurisdiction of High Court.
(v) Procedural irregularity.
(vi) Revisional jurisdiction of High Court.
(vii) Satisfaction of Magistrate.

52. **Revision—**
(b) Before amendment of S. 435 in 1923—
(i) Abatement of revision.

——Ss. 145 (7) and 439—Death of petitioner—High Court.

The death of the petitioner for revision of an order under S. 145 of the Code during the pendency of the application causes the application to abate. S. 145 (7) applies only to proceedings before the Magistrate. 6 P. R. (Cr.) 1893, Ref. (Martineau J.) Krishen Deo Singh v. Hari Singh.

AIR 1919 Lah 236 : 23 PR (Cr) 1919 : 52 IC 800 : 20 Cr LJ 720.

——Ss. 145 (7) and 489—Applicability of.

Cl. (7) of S. 145 is applicable only to proceedings under S. 145 but not to revisional orders, (Oldfield and Krishnan, JJ.) Subbaraja v. Rambhadru Raju.

AIR 1917 Mad 664 : 35 IC 821 : 4 LW 440 : 17 Cr LJ 389.

52. **Revision—**
(b) Before amendment of S. 435 in 1923—
(ii) Consequential orders upon revision.

——Consequential orders after setting aside proceedings.

The Dt. Magistrate on a dispute as to the right to grow and collect lac on plum trees standing on the lands in the holdings of the tenants attached and sold a part of the lac under S. 145. The High Court held that the proceedings were without jurisdiction. As regards the proceeds of the sale of lac held, that the High Court had power to pass consequential orders and that the lac stored and the sale proceeds should be kept in the custody of the Criminal Court pending a decision by a Civil Court on the question of the title to the lac. (Mookerjee, ACJ., Fletcher, N. R. Chatterjee, Richardson and Ghose, JJ.) Ali Mahomed Mandol v. Piggott.

AIR 1921 Cal 30 : 48 Cal 522 : 32 CLJ 270 : 60 IC 325 : 22 Cr LJ 213 (SB).

52. **Revision—**
(b) Before amendment of S. 435 in 1923—
(iii) Evidence, rejection, admission or misreading of.

——Disregarding Civil Court decree.

In disregarding delivery of possession, either symbolical or actual, granted by Civil Court, the

CRIMINAL P. C. (V of 1898), S. 145—52. Revision—(b) Before amendment of S. 435 in 1923

Magistrate acts with gross irregularity and in manner that is likely to cause a failure of justice. (Newbould and Suhrawardy, JJ.) Abhoy Mondal v. Babu Rai.

AIR 1923 Cal 176 (1) : 24 Cr LJ 517 (2).

Pattas and kist receipts are evidence not merely of legal right but of possession also. Where the Magistrate comes to a perverse conclusion on the question of possession after getting rid of the oral and documentary evidence in the case the High Court can interfere in revision. (Ramesam, J.) Thyaljee Ammal v. Srirangaroyan Gounden.

AIR 1923 Mad 60 : 16 MLW 497 : 43 MLJ 624 : 71 IC 228 : 1922 MWN 629 : 31 MLT 202 : 24 Cr LJ 100.

——Finding not based on legal evidence is open to revision—Scope.

A property was sold in execution of a decree. While an appeal was pending from an order refusing to set aside the sale the auction purchaser applied for mutation which proceeding was also stayed. In S. 145 proceedings the Magistrate relying on the evidence in the mutation proceedings came to the conclusion that the possession of the auction purchaser had been satisfactorily established and that existence of the conflicting claims rendered a breach of the peace at any time probable: Held the Magistrate was not justified in importing his knowledge of the evidence recorded in the mutation proceeding still undecided into this case and assuming that a breach of the peace was likely, the finding is thus virtually a finding based on no legal evidence and is open to revision. 34 Cal 840. Foll. (Kanhaiya Lal, J. C.) Mirza Raza Husain v. M. Hasan Mirza.

AIR 1922 Oudh 256 : 25 OC 148 : 69 IC 268 : 10 OLJ 157 : 23 Cr LJ 684.

——Applicability—Order declaring possession.

Where a Magistrate in passing an order under S. 145, makes a general remark that the evidence is not reliable without referring it or giving reasons it is not a disposal of the evidence upon record but amounts to refusal to exercise jurisdiction, liable to revision by High Court. (Jwala Prasad, J.) Lachmi Ojha v. Birja Misser.

AIR 1921 Pat 173 : 2 Pat LT 168 : 63 IC 152 : (1921) Pat HCC 110 : 22 Cr LJ 616.

——Refusal to examine witnesses is ground.

The refusal of a Magistrate to examine witnesses in a proceeding under S. 145 amounts to failure to exercise jurisdiction and entitles the High Court to interfere in revision. (Jwala Prasad, J.) Biswanath Mahapatra v. Shivanand Saraswathi.

AIR 1921 Pat 308 : 2 PLT 330 : 61 IC 718 : 22 Cr LJ 430.

——Survey entry—No oral evidence—Legality.

Where in the absence of oral evidence the Court decided the case upon the documentary

CRIMINAL P. C. (V of 1898), S. 145—52. Revision—(b) Before amendment of S. 435 in 1923

evidence, namely, the record of rights, the High Court will not interfere. (Jwala Prasad, J.) Pathak Jairam Singh v. Thakur Doman Singh.

AIR 1921 Pat 295 : 2 Pat LT 266.

——Decree of Civil Court not regarded—Duty of High Court.

The Criminal Court must respect the decree of a Civil Court and delivery of possession cannot go behind the decree, yet when in a proceeding under S. 145, it is found that notwithstanding such decree, the party adversely affected thereby continues in possession and the Criminal Court declares that the party should continue in possession till evicted in due course of law, the High Court will not interfere. (Jwala Prasad, J.) Manindra Kishore Jha v. Clairsmith.

AIR 1920 Pat 810 : 60 IC 430 : 22 Cr LJ 238.

——Ss. 145 (4) and 439—Enquiry—Rejection of evidence—Mere rejection of evidence does not vitiate proceedings under S. 145.

It depends upon the circumstances in each case whether the rejection of the evidence is tantamount to a refusal to exercise proper jurisdiction. If the evidence rejected is a material document affecting possession of a party, its rejection might furnish a good ground of grievance to that party. (Jwala Prasad, J.) Udit Narayan Lal v. Sundarman Jha.

AIR 1919 Pat 132 : 49 IC 858 : 20 Cr LJ 234.

——Ss. 145 (4) and 439—Rejection of material evidence.

The rejection of evidence by a Court is not a good ground for revision. But the rejection of material evidence offered by a party would amount to a refusal to exercise jurisdiction and is a proper ground for revision. (Jwala Prasad, J.) Paitali Singh v. Ganapathi Kuer.

AIR 1917 Pat 145 : 45 IC 337 : 19 Cr LJ 529.

——High Court can only interfere if the Magistrate's finding about possession is not based on any material before him. But the Magistrate is the sole judge of the sufficiency of materials. (Jwala Prasad, J.) Bansi Singh v. Emperor.

AIR 1918 Pat 228 : 3 PLW 353 : 19 Cr LJ 113.

——Ss. 145 and 439—Where, in a proceeding under S. 145 of the Cr. P. Code a Magistrate merely expresses his opinion on the documents produced and their legal effect without passing final orders under Sub-S. (6) the High Court cannot interfere in revision. (Spencer, J.) Rawri Manikyam In re.

AIR 1918 Mad 164 : (1918) MWN 37 : 43 IC 95: 19 Cr LJ 63.

——Ss. 145 (4) and 439—Presumption arising from recently published Record of Rights not given weight—No revision.

The omission of the Magistrate in making an order under S. 145, Cr. P. C., to give effect to the presumption arising from the entries in a

CRIMINAL P. C. (V of 1898), S. 145 — 52. Revision —(b) Before amendment of S. 435 in 1923

recently published record-of-rights is not a question of jurisdiction and the High Court cannot interfere on that ground in revision. (Holmwood and Richardson, JJ.) Chintamoni Jena v. Jagennath Ramanuja Das.

AIR 1915 Cal 644 : 19 CWN 123 : 28 IC 651 : 16 Cr LJ 315.

52. Revision—

(b) Before amendment of S. 435 in 1923—

(iv) Orders without jurisdiction or illegal orders.

See also Note 52— (b) (vi) Revisional jurisdiction of High Court.

——Ss. 145 and 146—Possession proceedings—Finding as to possession—Absence of—High Court—Interference in revision.

Where the Magistrate in proceedings under S. 145, Cr. P. Code did not even attempt to deal with the question of possession and gave no finding thereon but declared the possession to be with the party whom he considered to be lawfully entitled, his order is an obvious infringement of S. 145, Cr. P. Code and the High Court could set it aside in revision. 29 M 561 ; 17 Bom LR 382; 18 CWN 700 : 36 M 275 Ref. (Venkatasubba Rao, J.) Sinnanan Shukulathi Rowther v. Gulam Moideen Rowther.

AIR 1923 Mad 24 : (1922) MWN 689 : 71 IC 508 : 16 LW 338 : 24 Cr LJ 156.

——Where the Magistrate dismissed an application without finding as to who was in possession, his order is revisable. (Broadway, J.) Mt. Malan v. Makhan Singh.

AIR 1922 Lah 348 : 2 Lah 372 : 66 IC 65 : 23 Cr LJ 225.

——Question of jurisdiction—Decision as to—Revision.

A Magistrate has power to decide whether he has jurisdiction over the land in dispute and where he decides he has no jurisdiction, it is not a failure to exercise jurisdiction, so as to enable the High Court to interfere in revision. (Beachcroft and Ghose, JJ.) Rajanikant De v. Debendranath.

AIR 1920 Cal 912 : 61 IC 520 : 22 Cr LJ 392.

——When proceedings are instituted without jurisdiction under S. 145, the High Court has inherent power to set aside proceedings and pass consequential orders.

It is now well settled that a High Court is competent in the exercise of the power of superintendence vested in it under S. 107 of the Government of India Act, 1915 (which replaced S. 15 of the Indian High Courts Act, 1861), to set aside proceedings instituted without jurisdiction by a subordinate Court under S. 145; such power of superintendence can be exercised notwithstanding S. 435 (3), which lays down that proceedings under

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Chapter XII (which comprises Ss. 145, 148) are not proceedings within the meaning of that section. The High Court can, when it sets aside the proceedings, proceed to give such consequential directions as may be found necessary in the interests of justice in the circumstances of the particular case. Although the Cr. P. Code does not contain a provision corresponding to S. 151 of the C. P. Code, yet the inherent power of Courts is in no sense restricted in application to civil cases; it is equally applicable to criminal matters. The power is not capriciously or arbitrarily exercised; it is exercised ex debito justitiae to do that real and substantial justice for the administration of which alone Courts exist ; but the Court, in the exercise of such inherent power, must be careful to see that its decision is based on sound general principles and is not in conflict with them or with the intentions of the Legislature as indicated in statutory provisions. (Mookerjee, Ag. C.J., Fletcher, Chatterjee, Richardson and Ghose, JJ.) Pigot v. Ali Muhammad Mandal.

AIR 1921 Cal 30 : 60 IC 325 : 48 Cal 522 : 22 Cr LJ 213 (SB).

——Ss. 145 (1) and 439—Preliminary order—Interference.

The High Court will not ordinarily interfere with a preliminary order under S. 145, Cr. P. Code except where such order is manifestly illegal. (Sadasiva Iyer and Burn, JJ.) Gopala Iyer v. Krishnaswamy Iyer.

AIR 1920 Mad 209 : 54 IC 473 : 27 MLT 234 : 11 LW 459 : 21 Cr LJ 73.

——Although a proceeding under S. 145 will not be lightly set aside, the Jud. Commr. will interfere if the Magistrate acts without jurisdiction and declares possession with a person who has long been out of possession. (Batten, AJC.) Shankar v. Bhayaji.

AIR 1919 Nag 98 : 20 Cr LJ 445.

——Ss. 145 and 439.

Where a Magistrate has jurisdiction to take cognizance of a case and devotes his judicial mind to a consideration of the points which he is required to determine, any error in law with regard to the interpretation of the words of the section which he is applying is not an error which would, in the ordinary course, be subjected to an appeal. Such errors are not subject to superintendence. (Roe, J.) Andrew Yule & Co. v. A. H. Skone.

AIR 1919 Pat 210 : 4 Pat LJ 154 : 49 IC 647 : 20 Cr LJ 199.

——Proceedings under Chapter XII without formal order under S. 145 (1) are without jurisdiction and are open to revision. (Kotwal Offg. AJC.) Mahomed Hassan v. Mahomed Shami.

AIR 1919 Nag 160 : 49 IC 108 : 20 Cr LJ 124.

——The High Court can interfere with orders under Chap. XII Cr. P. Code passed without jurisdic-

CRIMINAL P. C. (V of 1898), S. 145—52. Revision—
(b) Before amendment of S. 435 in 1923
tion. (Jwala Prasad, J.) Ballam Singh v. Lal Babu.

AIR 1917 Pat 28 : 3 Pat LW 386 : 43 IC 329 : 19 Cr LJ 105.

——Making order declaring possession of property not claimed is not a defect of jurisdiction.

The case was sent back to the Magistrate to see whether any error had been committed by him and if so committed for correcting the same. (Chitty and Richardson, JJ.) Gagan Chand Naskar v. Peary Mohan Naskar.

AIR 1918 Cal 472 : 42 IC 723 : 18 Cr LJ 995.

——High Court—Interference.

Mistake of law is no ground for interference under S. 145, e.g., failure to add a party. But where the Magistrate awards to a party more than what he claimed he acts beyond his jurisdiction and the High Court will interfere. (Chapman, J.) Mukal Singh v. Ramsarup Singh.

AIR 1917 Pat 435 : 40 IC 692 : 18 Cr LJ 692.

——Ss. 145 and 439—High Court, when will interfere.

If a Magistrate refuses to examine except on the ground of delay or vexation the witnesses tendered in proceedings under S. 145 or fails to record a finding as to which party was in possession at the date of the preliminary order, he fails to exercise a jurisdiction vested in him by law and the High Court will interfere in revision. (Seshagiri Iyer, J.) Marudanayakam Pillai v. Moshammanao Rowthen.

AIR 1917 Mad 594 : 34 IC 329 : 17 Cr LJ 217.

——Ss. 145 and 439—Revision by High Court—Order on merits.

If the Magistrate has on a perusal of the written statements decided that the first party is an agent of the second party and therefore refused to decide which party is in possession : Held, that the High Court will interfere in revision. (Ayling and Hannay, JJ.) Vaithianatha Aiyer v. Suppalu Ammal.

AIR 1915 Mad 748 : 1 LW 939 : 26 IC 156 : 15 Cr LJ 708.

——Ss. 145 and 439—Order under S. 145—Revision.

Under section 439 the High Court has power to revise an order of the Magistrate passed under section 145, when there has been grave irregularity or non-compliance with the provisions of the Code amounting to an abuse of jurisdiction. (Kensington, J.) Mt. Lakhan v. Begam.

1 PWR Cr 20 : 4 Cr LJ 425.

——Ss. 145, 438—Defect in proceeding rendering it illegal—A defect in a proceeding under S. 145 of the Criminal P. Code, which renders it illegal, is a ground for revision of the order by the High Court. (Richards, J.) Harprasad v. Pandurang.

AWN 1905, 260 : 3 Cr LJ 48.

—Ss. 145, 435 (3)—Jurisdiction—Revision—Powers of High Court.

CRIMINAL P. C. (V of 1898), S. 145—52. Revision—
(b) Before amendment of S. 435 in 1923
Notwithstanding S. 435 (3) the High Court has jurisdiction to call for the records of proceedings, purporting to be proceedings under Ch. XII of the Code, where no order in writing, such as is required by section 145 (1) has been passed by the Magistrate. (Knox, J.) Bihari Lal v. Chajju.

AWN 1907, 49 : 2 ALJ 272 : 2 Cr LJ 222.

52. **Revision—**

(b) Before amendment of S. 435 in 1923—

(v) Procedural irregularity.

——Irregularity of procedure is no ground.

The essential requisite to give a Magistrate jurisdiction under section 145 is that he must be satisfied from information of some sort that a dispute likely to cause a breach of the peace exists concerning land or water or the boundaries thereof in his jurisdiction and that once he is so satisfied, his jurisdiction is complete and his subsequent action must be considered in relation to procedure, not jurisdiction. It being so, High Court will not interfere in revision with an order under section 145 even when the order is passed without giving an opportunity to the aggrieved party to produce evidence, that being only an irregularity in procedure. (Martineau, J.) Jhanda Ram v. Topan Ram.

AIR 1922 Lah 454 : 67 IC 584 : 4 UPLR (Lah) 82 : 23 Cr LJ 424.

——Review by Deputy Magistrate ex parte, legality of.

A complaint was lodged as to the possession of certain property and the Sub-Divisional Magistrate made an enquiry, heard evidence and made an order purporting to be under S. 145. He found that the proceedings under S. 145 were no longer necessary as there had been no breach of the peace during the four months previous to the proceedings. He found actual possession in favour of the first party and ordered the crops to be delivered to them. On the second party applying for review to District Magistrate, he set aside the order of the Sub-Divisional Magistrate and ordered the crops to be delivered to the second party. Held, although the procedure followed by the Sub-Divisional Magistrate was irregular and was not according to the procedure as laid down by S. 145, Cr. P. C. he must be considered to have contemplated the proceedings to be under S. 145. Under the circumstances it was not open to the Deputy Commissioner to review the Sub-Divisional Magistrate's decision, in any case to do so ex parte, and the order of the Deputy Commissioner should be set aside.

Further held that the order of Sub-Divisional Magistrate was not passed on proper procedure and it must be set aside. (Bucknill, J.) Jagu Pal v. Makunda 'Koer.

AIR 1922 Pat 449.

——Ss. 145 and 439—Irregularity in procedure—Revision.

CRIMINAL P. C. (V of 1898), S. 145—52. Revision—
(b) Before amendment of S. 435 in 1923

The High Court will not set aside an order under S. 145 except on the ground of want of jurisdiction or departure from procedure sufficiently grave so as to prejudice the parties. (Prideaux. AJC.) Balwant v. Balkrishna.

AIR 1919 Nag 115 : 49 IC 496 : 20 Cr LJ 176.

——Want of service of notice under S. 145 (3) is grave irregularity vitiating the proceedings—Order under S. 145 (4) will be set aside in revision. (Jwala Prasad, J.) Ram Sahai v. Deonandan Prasad.

AIR 1918 Pat 578 : 4 Pat LW 183 : 19 Cr LJ 71.

——Proceedings under S. 145, Cr. P. Code.

(Obiter). The High Court has jurisdiction to interfere in cases of illegalities or manifest irregularities in procedure committed by Magistrates in proceedings under S. 145, Cr. P. Code. (Seshagiri Iyer, J.) Marudanayakam Pillai v. Muhammad Rowthan.

34 IC 329 : 17 Cr LJ 217 (Mad).

——Proceedings under S. 145—Revision—Interference by Chief Court with the order of Magistrate.

The Chief Court will not interfere in revision with the order of the Magistrate under S. 145 of the Cr. P. Code where it is inconvenient and unnecessary even if the order is based on irregular procedure, inasmuch as the parties can always resort to a Civil Court for redress. An omission to make a joint owner of property a party in the revision, is immaterial when in the order of the Magistrate no mention is made of such joint owner, nor is he declared to be in possession. (Johnstone, J.) Mahomed Sharif v. Dhanpat Rai.

15 PWR (1914) Cr : 23 IC 487 : 68 PLR 1914 : 15 Cr LJ 279.

——Ss. 145, 439 and 537—Breach of peace—Existence of—Jurisdiction—Power of.

Once a Magistrate is satisfied from information of some sort that a dispute exists which is likely to cause a breach of the peace concerning land or water within his jurisdiction, his jurisdiction is complete under S. 145, Cr. P. C. and his subsequent action must be considered in relation to procedure, not jurisdiction. A petition does not lie under S. 439, Cr. P. C. to revise proceedings under S. 145, Cr. P. C. The words 'The record of which has been called for by itself' in S. 439, Cr. P. C., are not limited to cases where the High Court acts suo motu. The words 'Otherwise comes to its knowledge' have no reference to any power outside the Cr. P. C. (10 C. 268 F.). (Ayling and Napier, JJ.) Kamal Kutey v. Udayavarma Raja.

36 Mad 275 : 12 MLT 439 : 23 MLJ 499 : (1912) MWN 1154 : 17 IC 65 : 13 Cr LJ 753.

——Orders under S. 145, without observing proper procedure in the trial will be set aside in revision by the Chief Court. (Anderson, J.) Malik Sultan Mubaraz v. Mussammat Bano.

115 PLR 1903.

52. Revision—

(b) Before amendment of S. 435 in 1923—

(vi) Revisional jurisdiction of High Court.

——Proceedings under S. 145, Cr. P. Code—Revisional power of High Court — Jurisdiction — Material irregularity — Evidence of possession not considered—Effect of—Government of India Act, S. 107.

Where there is initial want of jurisdiction, proceedings, though they may purport to be under S. 145, Cr. P. Code, are not really proceedings under it and the High Court can interfere under S. 439, Cr. P. Code, but if the proceedings were properly started all interference on the ground of serious irregularity amounting to improper exercise of jurisdiction or improper refusal to exercise it can be only under S. 107 of the Government of India Act. 36 M 275, 286; 41 A 302 ; 37 MLJ 589 ; 27 MLJ 169 ; 17 CWN 205 ; 40 C 982 ; 32 C 249 ; 2 LW 107 ; 3 LW 164 ; 12 LW 939 ; 38 MLJ 73, Ref. to. Pattas and kist receipts are evidence not merely of legal right but of possession also. Where the Magistrate comes to a perverse conclusion on the question of possession after getting rid of the oral and documentary evidence in the case, the High Court can interfere in revision. (Ramesam, J.) Thylayee Ammal v. Srirangaroya Goundan.

AIR 1923 Mad 60 : 71 IC 228 : 43 MLJ 624 : 31 MLT 202 : 16 LW 497 : 1922 MWN 629 : 24 Cr LJ 100.

——Ss. 145 and 439—Government of India Act, S. 107—Power to quash proceedings under S. 145, Cr. P. C.

A Sub-Divisional Magistrate passed an order under S. 145, Cr. P. C. declaring first party to be entitled to retain possession as against the opposite party. Thereafter the interest of the principal person of the opposite party passed to another and he began to disturb possession of the first party. The Magistrate thereupon made an order drawing up new proceedings under S. 145, Cr. P. C. even though the parties and lands were identical. On revision against this order:

Held, when proceedings are taken under Cr. P. C., which amount to an abuse of process of Court and the object of which is only to harass the party who has got a previous order of the Magistrate in his favour, the High Court has ample jurisdiction to interfere (and ought to interfere) under S. 107 of the Government of India Act. The Magistrate did not exercise proper judicial discretion in starting the proceedings. (B. B. Ghose and Chotzner, JJ.) Aran Sordar v. Hara Sundar.

AIR 1923 Cal 95 : 37 Cal LJ 39 : 27 Cal WN 171: 71 IC 225 : 24 Cr LJ 97.

CRIMINAL P. C. (V of 1898), S. 145—52. Revision—(b) Before amendment of S. 435 in 1923

——Where the Dist. Magistrate wrongly ordered the substitution of proceedings under S. 145 for those under S. 144 but where the petitioner himself wanted proceedings under S. 145 and where the Sub-Divisional Magistrate himself drew up the proceeding on proper material the High Court will refuse to set aside the order. (Jwalaprasad, J.) Tiloki Rai v. Emperor.

AIR 1921 Pat 410 : 2 Pat LT 392 : 68 IC 34 : 23 Cr LJ 498.

——Revisional powers of the High Court in proceedings under Ch. XII considered. (Martineau, J.) Jhanda Ram v. Topan Ram.

AIR 1922 Lah 454 : 23 Cr LJ 424.

——Proceedings under S. 145—Possession proved—Preliminary order after a few days.

When a party is found to be in possession a few days before the preliminary order and when there is nothing on the record to suggest that there was any change of possession, the Court is not bound in revision to vacate the order. (Kumaraswami Sastri, J.) Mahomed Hussain Sahib v. Pachayappa Chetty.

AIR 1922 Mad 356 : (1921) MWN 866 : 14 LW 678 : 42 MLJ 147 : 65 IC 444 : 23 Cr LJ 92.

——Government of India Act, S. 107.

The High Court under S. 107 of the Govt. of India Act, 1915, can set aside proceedings instituted without jurisdiction by a subordinate Court under S. 145 notwithstanding S. 435 (4) of the Cr. P. Code and can make consequential or incidental orders under the same section. Thus it can give direction for disposal of property attached and dealt with by the subordinate courts. (Mookerjee, A. C. J., Fletcher, N. A. Chatterjee, Richardson and Ghose, JJ.) Ali Mahomed Mandol v. Piggot.

AIR 1921 Cal 30 : 48 Cal 522 : 32 CLJ 270 : 60 IC 325 : 22 Cr LJ 213 (S. B.).

——Ss. 145 and 439 — Difference of opinion — Senior judge.

On a difference of opinion in matters under S. 145, Cr. P. C., the Senior Judge's opinion prevails as the jurisdiction exercised by the High Court is under S. 107 of the Govt. of India Act and not under Ss. 435 and 439 Cr. P. Code. (Chaudhury and Newbould, JJ.) The Indian Iron and Steel Company v. Banso Gopal Tewari.

AIR 1920 Cal 824 : 32 CLJ 54 : 59 IC 403 : 22 Cr LJ 99.

——The High Court will not interfere with proceedings under Chapter 12 of the Code. But it can interfere in revision if there has been not a proceeding either in fact or in law as contemplated by S. 145. 17 ALJ 434 Ref. Where the lower Court has exceeded its jurisdiction in making the order, it is null and void and the High Court will

CRIMINAL P. C. (V of 1898), S. 145—52. Revision—(b) Before amendment of S. 435 in 1923

interfere. (Gokul Prasad, J.) Mt. Har Piari v. Nathe Lal.

LR 2 A (Cr) 22 : 18 ALJ 1140 : 59 IC 401 : 2 UPLR (All) 428 : 22 Cr LJ 97.

——Ss. 145 and 439—Revision by High Court.

In a proper case the High Court can call for the records of the proceedings of Magistrates under S. 145, Cr. P. C. and interfere in revision with the order. (Piggott and Walsh, JJ.) Mahadie v. Beni Prasad.

AIR 1920 All 225 : 42 All 214 : 18 ALJ 171 : LR 1 A (Cr) 47 : 55 IC 194 : 21 Cr LJ 242.

——Govt. of India Act S. 107.

High Court can interfere with orders under S. 145 only under S. 107 Govt. of India Act. (Sadasiva Iyer and Burn, JJ.) Gopala Iyer v. Krishnaswamy Iyer.

AIR 1920 Mad 209 : 27 MLT 234 : 21 Cr LJ 73.

——Ss. 145 and 439 — Powers of High Court — Government of India Act, 1915, S. 107—Difference of opinion—Letters Patent, Cl. 36.

S. 439, Cr. P. Code does not apply to a proceeding under S. 145 which is outside S. 435. On a difference of opinion on revision of such a proceeding, the opinion of the senior Judge prevails under Cl. 33 of the Letters Patent. 27 Cal. 892; 40 Cal. 477, 500 relied on. 15 C L J 337 : 39 Mad. 750 Approved. 15 Bom. 452, Diss. Semble.— If it be held that Cl. 36 applies only to original or appellate jurisdiction the Court should act in the absence of any provision to the contrary upon the principle underlying the clause. Per Huda J. The power of the High Court to interfere under S. 107 of the Government of India Act, 1915 in cases under S. 145, Cr. P. C., is not confined to questions of jurisdiction alone. It may also interfere when the Magistrate has acted with illegality or material irregularity and a party has been prejudiced thereby. 33 Cal. 68 Foll. (Newbould and Huda, JJ.) Motiram Bewa v. Merjan Sardar.

AIR 1920 Cal 417 : 47 Cal 438 : 31 CLJ 183 : 24 CWN 97 : 54 IC 169 : 21 Cr LJ 25.

——Proceedings under S. 145, Cr. P. Code— Revision.

It is not competent to the High Court to interfere in revision with proceedings under S. 145, Cr. P. Code. 19 C. 127; 31 A. 150; 40 A. 364; 36 A. 233, Ref. (Knox, J.) Sathawat Ali v. Emperor.

41 All 302 : 51 IC 337 : 17 ALJ 321 : 20 Cr LJ 449.

——Ss. 145, 435 (3) and 503 — Proceedings under Chap. XII.

An order passed under S. 145 and proceedings under Chap. XII of the Cr. P. Code are not subject to revision. S. 436 (3), Cr. P. C., does not deprive the High Court of its jurisdiction unless the proceedings are in fact, and not merely in

CRIMINAL P. C. (V of 1898), S. 145—52. Revision—(b) Before amendment of S. 435 in 1923

name, proceedings under Chap. XII of the Code. (Saunders, J. C.) Nga Chit v. Nga Ya.

AIR 1918 Upp Bur 8 : 44 IC 741 : 3 UBR (1917) 33 : 19 Cr LJ 389.

——Ss. 145 and 435 (3)—Limits of.

Orders passed under Chap. XII of the Cr. P. Code are not subject to revision, being expressly excluded from the operation of S. 435 of the Code by the Cl. (3) of that section. But in order to make S. 435, Cl. (3) applicable, that is to say, to deprive the High Court of the power of interference in revision, the proceedings must be proceedings under Chap. XII of that Code in fact and not only in name. (Saunders, J. C.) Nga Hpay v. Nga Aung Baw.

AIR 1918 Upp Bur 4 : 44 IC 685 : 3 UBR (1917) 35 : 19 Cr LJ 381.

——Ss. 145 and 439.

The High Court has no power to send for proceedings when these proceedings are in intention, in form and in fact proceedings under Chap. XII by a Magistrate duly empowered to act under the Chapter, either under S. 435, Cr. P. C., or S. 107 of the Govt. of India Act or under S. 15 of the High Courts Act. 31 A, 50; 26 A, 144: 36 A, 233: 4 ALJ 91, Foll. 35 IC 801, Diss: 24 A 315: Expl. (Knox, C. J.) Mithukdhari Singh v. Jaisari.

AIR 1917 All 220 : 39 All 612 : 15 ALJ 576 : 41 IC 652 : 18 Cr LJ 828.

——Ss. 145 and 435—Revision by High Court.

The High Court cannot revise an order passed by a Magistrate under S. 145, Cr. P. Code under S. 435, Cr. P. Code or under S. 15 of the High Courts Act of 1861. 26 A. 144 Ref, (Knox, J.) Mutsadi Lal v. Tarif.

AIR 1917 All 396 : 38 IC 978 : 18 Cr LJ 418.

——Ss. 145 and 435—Non-chartered High Court's power of revision over proceedings under Chap. XII.

An order is not one under Chap. XII of the Code merely because it is mentioned to be made under S. 145, but the orderly and decent nature of a Court's work is presumed, and a Magistrate with jurisdiction can enter the ring fence of Chap. XII, and he cannot be followed nor can his procedure be examined.

Proceedings under Chap. XII of the Code are not open to revision by a non-chartered High Court, but if and where the fact of such proceedings being initiated by the Lower Court without jurisdiction can be ascertained by such High Court without sending for the Lower Court's records it can exercise revisional power. 56 C. 1, Dist. (Kendall and Muhammad Ali, AJCs.) Udai Bhan Partab Singh v. Ram Samajh.

AIR 1917 Oudh 400 : 3 OLJ 546 : 19 OC 136 : 37 IC 308 : 18 Cr LJ 100.

——Proceedings under S. 145—Order on Police report—Other reasons.

CRIMINAL P. C. (V of 1898), S. 145—52. Revision—(b) Before amendment of S. 435 in 1923

An order under the section passed by a competent Magistrate should not be lightly interfered with by the High Court, having regard to S. 435 (3).

A Magistrate need not record other reasons, if he takes action on a police-report. Proceedings under Chapter XII have been expressly excluded from the scope of S. 439. (Krishnan, J.) Krishnappa Naidu v. Alamelu Ammal.

AIR 1917 Mad 610 : 36 IC 855 : 5 LW 165 : 18 Cr LJ 23.

——Ss. 145 and 435—High Court's power to deal with case on merits.

The High Court cannot in revision deal with Magistrate's order under S. 145 suo motu when he has complied with all the formalities. (Oldfield and Krishnan, JJ.) Subbaraju v. Rambhadra Raju.

AIR 1917 Mad 664 : 35 IC 821 : 4 LW 440 : 17 Cr LJ 389.

——Ss. 145, 435—Government of India Act, 1915, S. 107.

The High Courts having no statutory power of superintendence have no power under S. 435 to call for the record of the proceedings taken under Chap. XII of the Code, by a competent Magistrate. A chartered High Court can under S. 107 of the Government of India Act, 1915, interfere with the order under S. 145 of the Cr. P. Code by a Magistrate acting without jurisdiction or in excess. It cannot do so merely for either an irregularity in proceedings unless it is a material one amounting to refusal to exercise or a usurpation of jurisdiction or prejudicing either party to it, or an erroneous decision on the point of law or fact. Prejudice cannot be construed merely from an erroneous decision on a question of law or fact; but the irregularity must have prevented the party from having a fair trial. It means his disability to place before the Court his version of facts and the law applicable. (Chamier, C. J., Sharfuddin and Roe, JJ.) Parmessar Singh v. Kailaspati.

AIR 1916 Pat 292 : 1 Pat LJ 336 : 1 Pat LW 95: 35 IC 801 : 1917 Pat HCC 1 : 17 Cr LJ 369 (FB).

——Ss. 145 and 439—Orders regarding possession —Not to be lightly disturbed.

An order under S. 145 is made for the purpose of keeping the peace pending the party's appeal to the civil tribunal and should not be lightly disturbed. (Trotter, J.) In re. Ingaraja Misro.

AIR 1917 Mad 204: 33 IC 319 : 17 Cr LJ 143.

——Ss. 145 and 439—S. 15, Charter Act.

Proceedings under Chap. XII are of a special nature giving Magistrates greater liberty than in trying ordinary crimes and such proceedings should not be interfered with in revision under S. 439, Cr. P. Code, or under S. 15 of Charter Act, unless they are without jurisdiction or are obviously unreasonable or unjust. 36 M. 275, Foll.

CRIMINAL P. C. (V of 1898), S. 145—52. Revision—
(b) Before amendment of S. 435 in 1923
(Sadasiva Iyer and Phillips, JJ.) Sudalai Muthu Chettiar v. Inan Samban.

AIR 1916 Mad 775 : 31 IC 367 : 16 Cr LJ 767.

——Ss. 145 and 439—Power of Judicial Commissioner's Court.

The Judicial Commissioner's Court has no authority to revise proceedings of a Magistrate under S. 145, Cr. P. C. (Stuart, AJC.) Ibad-Ullah Khan v. Rahat Ullah Khan.

AIR 1915 Oudh 208 : 29 IC 669 : 18 OC 69 : 16 Cr LJ 541.

——Ss. 145 and 439—Proceedings under—Power of High Court.

Where proceedings are taken under Chap. XII of the Cr. P. C. by a Magistrate duly empowered the High Court has no power to interfere in revision even though the Magistrate's order is erroneous in law. (Fawcett, JC., and Crouch, AJC.) Farid v. Piru.

AIR 1914 Sind 8 : 8 SLR 207 : 27 IC 907 : 16 Cr LJ 235.

——Order on merits.

A decision based on the merits of a case cannot be interfered with in revision. (Spencer, J.) Vaidyanath Iyer v. Suppallu Ammal.

AIR 1915 Mad 27 : (1914) MWN 795 : 25 IC 997: 15 Cr LJ 669.

——Ss. 145 and 439—Order—Finality.

A Magistrate's order under S. 145 is not revisable by the High Court. Authorities reviewed. (26 A 144; 31 A 150 F.) (Ryves and Piggott, JJ.) Syeda Khatun v. Lal Singh.

AIR 1914 All 71 : 36 All 233 : 12 ALJ 344 : 25 IC 324 : 15 Cr LJ 572.

——Ss. 145, 435 and 439—Jurisdiction of High Court to interfere with orders under S. 145.

The High Court has no power to interfere under Ss. 435, 439 of the Code, with orders under S. 145 of the Code. (Sadasiva Aiyar, J.) Palani Chetty v. Rathina Chetty.

AIR 1915 Mad 10 : 26 MLJ 208 : (1914) MWN 362 : 25 IC 597 : 15 Cr LJ 509.

——Revision when allowed.

A revision lies to the High Court, where a Magistrate closes a proceeding under the section without complying with all the provisions of the section and to the prejudice of the parties. (Rafique, J.) Jhengar v. Baij Nath.

19 IC 709 : 11 ALJ 586 : 14 Cr LJ 277.

——Ss. 145 and 439—High Court.

In cases under S. 145, the High Court may revise the lower Court's order if it is entirely opposed to law and justice and if the opposite party's conduct be lawless and high-handed. Except in such special cases the High Court will not interfere. (Johnstone, J.) Sri Ram v. Faujdar Singh.

33 PWR Cr 1912 : 193 PLR 1912 : 16 IC 527 : 13 Cr LJ 719.

CRIMINAL P. C. (V of 1898), S. 145—52. Revision—
(b) Before amendment of S. 435 in 1923
——Charter Act (24 and 25 Vict., C. 104), S. 15.—Interference under when possible.

In a case where the Magistrate has acted in accordance with law it would require very strong circumstances to justify interference with his order by the High Court. To induce the High Court to do so it would be necessary to show quite clearly that the procedure though right in law has in fact amounted to an absolute denial of justice. (Harington and Teunon, JJ.) Harendra Kumar Bose v. Girish Chandra Mitra.

7 Ind Cas 798 : 38 C 24 : 11 Cr LJ 530.

——Ss. 145, 439—Omission to follow procedure laid down therein—Revision.

An order purporting to be one under S. 145, Cr. P. C., 1898, tacked on to an order dismissing a complaint under S. 297, Indian Penal Code, is illegal and without jurisdiction for the reason that it has been passed without following the procedure laid down in the section. The order is therefore liable to be set aside in revision. (Chevis, J.) Haidar Shah v. Crown.

24 PWR Cr 1910 : 6 Ind Cas 955 : 11 Cr LJ 422.

——When a Magistrate has jurisdiction under S. 145 and comes to a decision as to possession within the meaning of sub-s. (4) that decision as to possession whether right or wrong is one which cannot be questioned in revision. (Evans, AJC.) Iklas Kunwar v. Raghuraj Bahadur Singh.

4 Ind Cas 876 : 12 OC 400 : 11 Cr LJ 69.

——Ss. 145 and 435—High Court's Act of 1861 (24, 25 Vic., Ch. 104) S. 15—Order under S. 145, Crim. Pro. Code—Revision.

The High Court has no power to interfere in revision, either under the Code, or the High Courts Act, S. 15, where a Magistrate empowered to take proceedings under Ch. XII of the Cr. P. C. takes such proceedings and passes an order. (George Knox, J.) Jhingai Singh v. Ram Pratap.

6 ALJ 113 : 31 A 150 : 1 Ind Cas 762 : 9 Cr LJ 382.

——Ss. 145 and 435—Revision—Joint trial—Illegality of.

The jurisdiction of the High Court to revise an order of the Magistrate which is illegal and irregular, purported to have been made under S. 145, is not excluded by S. 435. An order passed under S. 145 against several accused in a joint trial against them which was illegal by reason of the fact that they were found to be in possession of different and separate pieces of land alleged to be the property of the complainant, will be illegal and will be set aside. (A. Lucas J. C. and H. N. Crouch, A. J. C.) Crown v. Jamal wd. Pirmahomad.

1 SLR 25, Cr : 9 Cr LJ 265.

——Ss. 145 and 435 (3) — Jurisdiction of Judicial Commissioner to revise order under S. 145.

(Per Lucas J. C. and Pratt AJC)—In view of the provisions of S. 435 (3) the Judicial Commissioner's Court cannot revise the order of the

CRIMINAL P. C. (V of 1898), S. 145—52. Revision—
(b) Before amendment of S. 435 in 1923
Magistrate under S. 145. (Lucas, Crouch and Pratt, JCs.) Balmukand Jagannath v. Emperor.

1 SLR 50, Cr : 8 Cr LJ 170.

——Ss. 145, 435.

Where an order passed under S. 145 (1) is in substantial compliance with the requirements of the section, the High Court has no power in revision to interfere with the proceeding under Ch. XII. (Knox, J.) Baban Singh v. Baldeo Singh.

4 ALJ 91 : AWN 1907, 50 : 5 Cr LJ 117.

——Ss. 145, 435—Order under S. 145—Revision.

Where the proceedings before a Magistrate are really within the purview of S. 145, the High Court cannot under S. 435 interfere in revision. But where the proceedings disclose an exercise of powers not conferred by S. 145 under which the proceedings purport to be, the High Court can interfere. (Batty and Batchelor, JJ.) In re Rasal Jamal.

7 Bom LR 475 : 2 Cr LJ 451.

——Interference with discretionary orders—Orders in matter of costs in proceedings under S. 145—Interference. See Cr. P. C., S. 148.

2 Cr LJ 408 (Cal).

——Ss. 145 (1) and 435 (3).

An order purporting to be passed under S. 145 (1) of the Code of Criminal Procedure must strictly comply with the provisions of that section. Where the order was defective in the sense that it gave no information as to the subject of the dispute and lett the persons to whom it was issued quite in the dark as to the property in regard to which they had to set forth their respective claims, it was held that the High Court had jurisdiction to set aside the order in its revisional jurisdiction. (Banerji, J.) In the matter of the petition of T. A. Martin.

1904 AWN 234 : 27 All 296 : 1 Cr LJ 917.

——Ss. 135, 435—Miscellaneous proceedings under S. 145— Rules of procedure— Reference by Subdivisional Magistrate—Legality of.

Miscellaneous proceedings under the Code of Criminal Procedure are governed as far as may be by the ordinary rules of procedure. Magistrates are solely and entirely responsible for a case so long as it remains upon their files and no references which are not allowed by the Code can be made or can be acted on in the case either of regular trials or of miscellaneous proceedings. The jurisdiction of the High Court to revise an order passed under Chap. XII of the Code of Criminal Procedure is barred. (Ismay, Esqr.) Murat Singh v. Mt. Paika Bai.

17 CPLR 133 : 1 Cr LJ 877.

——Ss. 145 and 435 (3).

A High Court not appointed by a Royal Charter is entirely barred by S. 435 (3), Cr. P. C. from interfering on revision in proceedings taken under Chapter XII of the Code. (Herbert Thirkell White C. J., Bigge and Birks, JJ.) Raj Chundro v. Po Sein.

2 LBR 239 : 10 Bur LR 300 : 1 Cr LJ 737.

——High Court's power of revision.

See High Courts Act 1861 (Statutes 24 and 25 Vic. Chapter CIV) S. 15.

1 Cr LJ 339 (All).

52. Revision—

(b) Before amendment of S. 435 in 1923—

(vii) Satisfaction of Magistrate.

——Grounds for satisfaction, whether justiciable, by High Court.

High Court should not ordinarily examine whether the grounds upon which the Magistrate was satisfied as to the likelihood of breach of the peace, afford a reasonable ground for his conclusions. 26 Cal 513 dissented from. (Rampini and Mookerjee, JJ.) Kulada Kinkar Roy v. Danesh Mir.

33 C 33 : 10 CWN 257 : 2 CLJ 271 : 2 Cr LJ 670 (FB).

52. Revision—

(c) Letters Patent appeal from orders in revision.

——Letters Patent, (Mad) Cl. 15.

Though a Magistrate acting under S. 145, Cr P. C., is not a Court of civil jurisdiction but a Criminal Court, an order passed, on revision, by a single Judge of the High Court on an order under S. 145 is not one made in a "Criminal trial" and as such an appeal lies from such a judgment under Cl. 15 of the Letters Patent. (Subrahmania Aiyar and Benson and Miller, JJ.) Raja of Kalahasti v. P. Narasimha Nayani Varu.

17 MLJ 158 : 5 Cr LJ 343 (FB).

53. Revival of proceedings.

See (1) Note 6 (h) Revival of proceedings and (2) Note 16. Effect of order under the section.

54. Sections 145, 144 and 107 compared.

(a) Sections 145 and 107.

(b) Sections 145 and 144.

54. Sections 145, 144 and 107 compared.

——Ss. 107, 144 and 145—Proceedings under S. 107—Imminent danger of breach of peace—Magistrate can further take proceedings under S. 145—Enquiry held by Magistrate held not one made with a view to take action under S. 144—Proper procedure indicated. (Dave, J.) Bhanwar Singh v. S. B. Khetri.

AIR 1953 Raj 202 : ILR (1953) 3 Raj 189 : 1953 Cr LJ 1843.

——Ss. 144 and 145—Scope—Dispute relating to possession of land—Likelihood of breach of peace—Proceedings under S. 145 are proper. (Lakshmi Narain, JC.) Padmanava v. Bidhu Bhusan.

AIR 1952 Tripura 26 : 1953 Cr LJ 81.

CRIMINAL P. C. (V of 1898), S. 145 — 54. Ss. 145, 144 and 107 compared

——Relative scope of Ss. 107, 144 and 145—Intention of Legislature—Magistrate can resort to S. 107 after passing order under S. 144 or can open proceedings under S. 145 in supersession of order passed either under S. 144 or S. 107 and take appropriate steps.

See Cr. P. C. S. 107.

1947 JLR 240.

——Proceedings under Ss. 107, 144 and 145 when should be taken indicated. (Ball, J.) P. K. Madavan v. The King.

1946 Rang LR 115.

——Habitual and unjustifiable use of S. 144, Criminal P. C., as a substitute for Ss. 107 and 145 of the Code is deprecated. (Davis, JC and Weston, J.) Viru Kamu v. Dewandas Jhaman Das.

AIR 1940 Sind 158 : 13 RS 110 : ILR (1940) Kar 508 : 190 IC 618 : 41 Cr LJ 952.

——Though a Magistrate's powers under S. 144, Cr. P. C., are very wide, the Court must deprecate the habitual and unjustifiable use of the S. 144 as a substitute for Ss. 107 and 145 of the Code. A summary procedure under S. 144 should not be substituted in cases in which without possible doubt, proceedings under S. 145 can be taken. (Rowland, J.) Domon Gope v. Het Narain Singh.

AIR 1940 Pat 382 : 7 BR 54 : 13 RP 226 : 190 IC 425 : 41 Cr LJ 907.

——It is not open to a Magistrate by passing repeated orders under S. 144, Cr. P. C., to avoid the decision of a dispute which may be appropriately dealt with under S. 145 or S. 107, Cr. P. C. (Dhavle, J.) Chrestien F. E. v. Carter.

AIR 1939 Pat 512 : 20 PLT 374 : 12 RP 232 : 6 BR 30 : 184 IC 240 : 40 Cr LJ 895.

——Where S. 107 or S. 145, Cr. P. C., will meet the requirements of a case, S. 144, Cr. P. C., is not an appropriate remedy. (Rowland, J.) Jagrupa Kumari v. Chotey Narain Singh.

159 IC 455 : 8 RP 279 : 2 BR 83 : 37 Cr LJ 95.

——Right of worship.

Where the dispute is as to the right of worship only and not as regards the possession of the temple, the proper section under which an action can be taken to prevent the breach of the peace is S. 147 and not S. 145. (Krishnan, J.) Sinnaswami Chetti v. Pannadi Palani Goundan.

AIR 1925 Mad 779 : 88 IC 2 : 48 MLJ 528 : 26 Cr LJ 1057.

——Ss. 107, 144 and 145—Dispute regarding land likely to cause breach of the peace—Discretion of Magistrate to proceed either under S. 107 or S. 144 or S. 145.

See Cr. P. C., S. 107.

2 Cr LJ 769 (Cal).

54. Sections 145, 144 and 107 compared—

(a) Sections 145 and 107.

——Ss. 107 and 145—Scope—Dispute as to land—Proper procedure.

See ibid, S. 107.

AIR 1953 Pat 277 : 1953 Cr LJ 1456

CRIMINAL P. C. (V of 1898), S. 145 — 54. Ss. 145, 144 & 107 compared—(a) Ss. 145 & 107

——Ss. 145, 107—Land dispute—Proper procedure.

Where there is a land dispute the proper procedure is to institute proceedings under S. 145 of the Code, but if circumstances necessitate the drawing up of proceedings under S. 107 of the Code then it should be between both the parties in order that no one may be placed at a disadvantage. (Imam, J.) State v. Shakoor.

AIR 1953 Pat 99 : 1953 BLJR 37 : 1953 Cr LJ 816.

——Ss. 107 and 145—Distinction between pointed out.

See ibid, S. 107.

AIR 1953 All 259 : 1953 Cr LJ 628.

——Proceedings under, when should be taken—Duty of Magistrate—Question of possession already decided by Civil Court—Proper proceedings are under S. 107 and not S. 145. See ibid S. 107.

AIR 1952 Vind Pra 67 : 1952 Cr LJ 1514.

——Ss. 145 (10), 107—Proceedings under Ss. 145 and 107 whether can be started simultaneously.

It is within the discretion of a Magistrate to proceed simultaneously or not under Ss. 145 and 107 in the cases in which there is a dispute between two parties about immovable property. However, even where action is taken simultaneously, there should be two separate proceedings—one under S. 145 and the other under S. 107. To have one proceeding only is not a correct procedure. (Wanchoo CJ and Bapna J.) Nahar Singh v. State.

AIR 1951 Raj 156 : ILR (1951) Raj 265 : 52 Cr LJ 1209.

——Simultaneous proceedings under both sections, viz., Ss. 107 and 145. See Cr. P. C. (1898), S. 107.

1951 RLW 176.

——Dispute as to possession of land—S. 107 if should be applied—Applicability of S. 145. See ibid S. 107.

AIR 1950 Pat 502.

——Ss. 145 and 107.

Where there is a dispute concerning land, which is likely to cause an apprehension of a breach of the peace, the proper procedure is to apply S. 145 and decide the question of possession once for all. It is illegal on the part of the Magistrate to convert the proceeding under S. 145 into a proceeding under S. 107 without coming to a finding on the question of possession after taking evidence in the proceeding under S. 145. He cannot purport to do so on the basis of a report of an enquiry under the Bihar Bakasht Disputes Settlement Act, (13 (XIII) of 1947) made in the course of proceedings under S. 145. Strictly such report is not evidence in the case. (Das, J.) Ram Charan Singh v. Basudeo Dusadh.

AIR 1949 Pat 482 : 51 Cr LJ 92.

——Dispute relating possession of immovable property likely to occasion breach of peace—Proce-

CRIMINAL P. C. (V of 1898), S. 145 — 54. Ss. 145, 144 & 107 compared—(a) Ss. 145 & 107

dure under S. 145 and not under S. 107 should be adopted.

If the Magistrate comes to the conclusion that the dispute relating to the possession of immovable property between the two parties is likely to occasion a breach of the peace, the proper procedure to be adopted is that described in S. 145 and not in S. 107. (Agarwala J.) Deoballam Singh v. Gorakhnath Singh.

AIR 1947 Pat 235 : 27 PLT 231 : 48 Cr LJ 703.

——If the Magistrate is satisfied at any time that there is an apprehension of a breach of the peace arising out of a dispute with regard to certain land the proper course for him would be to institute a proceeding under S. 145, or to proceed against both the parties, under S. 107. (Fazl Ali, J.) Amanat Ali v. Emperor.

AIR 1929 Pat 67 : 115 IC 545 : 10 PLT 639 : 12 AI Cr R 451 : 30 Cr LJ 492.

——While it is discretionary with the Magistrate to draw up proceedings under S. 107, the proper course when there is bona fide dispute as to lands, is to proceed under S. 145. Otherwise, the effect would be to bind down one of the parties only to the dispute without any adjudication upon the question as to which of the two parties is in possession. AIR 1922 Pat 435 (FB), Ref. and foll.; 32 Cal 966 and 7 CWN 746, Dist. (Sen, J.) Shama Charan v. Emperor.

AIR 1925 Pat 610 : 90 IC 442 : 6 PLT 766 : 1925 PHCC 263 : 26 Cr LJ 1562.

——Ss. 145 and 144—Applicability—Scope.

Where the Magistrate merely stated that as proceedings were previously taken under Section 144 and incidentally in the course of those proceedings it was found that the Counter-petitioners were in possession of the property, it was not desirable to proceed with the enquiry under Section 145. Held, the order of the Magistrate clearly contravened the provisions of the Cr. P. C. The order under S. 145 is without jurisdiction when no evidence is taken and no enquiry held before the final order is made, by the Magistrate. 2 SW 1208 ; 17 Bom LR 382 ; 17 CWN 700 referred to. (Venkatasubba Rao, J.) Palani Goundan v. Kulandaivelu Goundan.

AIR 1922 Mad 437 : 43 MLJ 716 : 72 IC 541 : 1922 MWN 484 : 24 Cr LJ 429.

——Applicability—Scope of.

S. 144, being of general application should not be resorted to when S. 145 is sufficient to meet the requirements of a particular case. (Miller, Mullick and Jwala Prasad, JJ.) Sheobalak Singh v. Kamaruddin Mandal.

AIR 1922 Pat 435 : 1 Pat LR Cr 22 : (1922) Pat HCC 241 : 3 PLT 573 : 68 IC 149 : 2 P 941 : 23 Cr LJ 549.

——Applicability.

The fact that there is a dispute about land which gives rise to an apprehension of the breach

CRIMINAL P. C. (V of 1898), S. 145 — 54. Ss. 145, 144 & 107 compared—(a) Ss. 145 & 107

of the peace does not deprive a Magistrate of his power to take action under S. 107, Cr. P. C. (Bucknill, J.) Abdus Sayeed Khan v. Emperor.

65 IC 555 : 23 Cr LJ 123 (Pat).

——Ss. 145 and 107—Security for keeping peace—Propriety of order under S. 107.

S. 145 does not apply where one party is clearly in possession and the other party wants to take forcible possession of it, as there is no dispute as to possession of the property within S. 145. The proper remedy is to take proceedings under S. 107 of the Code.

Where the property was recorded in the Collector's register in the name of the widow after the death of her husband in the absence of an objection by the agnates under Bengal Land Registration Act, and where there was a dispute as to the possession of the property, proceedings under S. 107 against the agnates who claimed the properties on the ground of survivorship were proper especially where there was overwhelming evidence of the widow's possession. An order under S. 107 can be passed only when the wrongful acts can be proved by overt actions against each of the several individuals sought to be bound down. Where, however, the wrongful acts are committed or threatened to be committed jointly by a number of individuals and not only by some of them, the act is the act of all and therefore all of them are liable under S. 107. (Jwala Prasad, J.) Lachmi Singh v. Emperor.

AIR 1920 Pat 687 : 1 Pat LT 681 : 59 IC 374 : 22 Cr LJ 86.

——Ss. 145 and 144—Emergency orders—Breach of peace—Proceedings under S. 145.

A Magistrate can, after a final order under S. 144, draw up proceedings under S. 145. (Sultan Ahmed, J.) Jhaman Mahton v. Thakuri Mahton.

AIR 1920 Pat 219 : 1 Pat LT 369 : 57 IC 449 : 2 UPLR (Pat) 192 : 21 Cr LJ 625.

——Ss. 145 and 144—Emergency orders—Breach of the peace—Order under S. 144.

It is competent for a Divisional Magistrate to initiate proceedings under S. 145, Cr. P. Code during the subsistence of an order passed by a Sub-Magistrate under S. 144. (Sadasiva Iyer and Burn, JJ.) Gopala Iyer v. Krishnaswamy Iyer.

AIR 1920 Mad 209 : 11 LW 459 : 27 MLT 234 : 54 IC 473 : 21 Cr LJ 73.

——Ss. 107 and 145— Likelihood of breach of peace —Proceedings under S. 107—Legality.

See ibid, S. 107.

10 Cr LJ 231 (Sind).

——Ss. 107 and 145—Bar of proceedings.

See Cr. P. C. S. 107.

10 Cr LJ 221 (Nag).

CRIMINAL P. C. (V of 1898), S. 145 — 54. Ss. 145, 144 & 107 compared—(a) Ss. 145 & 107

——Bona fide dispute regarding procedure— Proper procedure to be followed.

See Criminal P. C. Ss. 107, 145.
7 Cr LJ 403 (Cal)

——Attempt to eject by force a person in possession of immovable property — Breach of peace imminent : Held that magistrate might legally take action against aggressors under S. 107 and that it was not necessary on finding that their claim was not bona fide to take proceedings under S. 145. (Richards, J.) Emperor v. Ram Baran Singh.

28 All 406 : 3 Cr LJ 323.

——Ss. 107 and 145 — Dispute concerning possession of land—Jurisdiction to proceed under S. 107 if ousted.

See Cr. P. C. S. 107.
2 Cr LJ 272 (Cal).

——Conditions necessary of applicability of S. 145 and S. 107.

See Criminal P. C. S. 107.
115 PLR 1903.

54. Sections 145, 144 and 107 compared—

(b) Sections 145 and 144.

——Dispute regarding land can also be dealt with under S. 144, Criminal P. C., provided that in the opinion of the authorised Magistrate, 'there is sufficient ground for proceeding under this section and immediate apprehension or speedy remedy is desirable'. Orders passed under this section, however, are merely 'temporary orders' in urgent cases of apprehended danger, and cannot remain in force for more than two months (unless in certain cases the Provincial Govt. by notification in the Official Gazette otherwise directs). They are further not always passed in strict conformity with legal rights of private parties, but may in proper cases constitute an interference with private rights required in a temporary emergency. Nor is it to be expected, having regard to the temporary and urgent character, that they would be passed after taking evidence of possession in the manner laid down in S. 145 (4), so as to entitle the Magistrate judicially to pronounce on the fact of possession. (Dhavle, J.) Madho Singh v. Emperor.

AIR 1942 Pat 331 : 23 PLT 243 : 8 BR 670 : 14 RP 658 : 200 IC 316 : 43 Cr LJ 637.

——Applicability to mala fide disputes.

Preventive action under Part IV of Criminal P. C., can be taken under various sections, each with its own scope and conditions of applicability. A dispute likely to cause a breach of the peace concerning land can be dealt with under S. 144 which applies to disputes which are not bona fide. (Dhavle, J.) Madho Singh v. Emperor.

AIR 1942 Pat 331 : 23 PLT 243 : 8 BR 670 : 14 RP 658 : 200 IC 316 : 43 Cr LJ 637.

CRIMINAL P. C. (V of 1898), S. 145 — 54. Ss. 145, 144 & 107 compared—(b) Ss. 145 & 144

——On an application alleging that there was a dispute likely to lead to a breach of the peace about the possession of a certain plot of land, proceedings under S. 145, Criminal P. C., should be instituted. (Henderson, J.) Kalipada Roy v. Satish Chandra.

AIR 1942 Cal 66 (1) : 45 CWN 1090 : 14 RC 477 : 198 IC 559 : 43 Cr LJ 396.

——When, in the course of a proceeding under S. 144, Criminal P. C., the Magistrate finds that there is a bona fide dispute as to possession of land likely to cause a breach of the peace, he is bound immediately to take action under S. 145. (Davis, J. C. and Weston, J.) Viru Kamu v. Dewandas Jhaman Das.

AIR 1940 Sind 158 : 13 RS 110 : ILR (1940) Kar 508 : 190 IC 618 : 41 Cr LJ 952.

——Ss. 145, 144 — Bona fide dispute as to possession of land—Proper way is to proceed under S. 145 and not under S. 144.

In the case of bona fide disputes with regard to possession of land, the proper method of dealing with the dispute is by a proceeding under S. 145, Criminal P. C., and not by a proceeding under S. 144. (Agarwala, J.) Bhikhali Tewary v. Achaibar Kuer.

AIR 1940 Pat 471 : 21 PLT 326 : 6 BR 464 : 12 RP 618 : 187 IC 349 : 41 Cr LJ 451.

——Where the dispute is with regard to possession of immovable property, a proceeding under S. 144, Criminal P. C., is a poor substitute for a proceeding under S. 145, which settles once for all so far as the Criminal Courts are concerned the question of possession with regard to a particular piece of immovable property. Such cases should be decided under S. 145, Criminal P. C. (Verma, J.) Puran Singh v. Mt. Ram Jhari Koer.

AIR 1935 Pat 224 : 7 RP 538 : 1 BR 387 : 155 IC 88 : 36 Cr LJ 655.

——Although, where there is a bona fide dispute of possession between the parties, the Magistrate ought to proceed under S. 145, Cr. P. C., and not under S. 144 of the Code, the High Court will not interfere with the order under S. 144 after it has spent its force by reason of the expiry of the period to which its effect is confined. It will be unnecessary and undesirable to direct the Magistrate to begin under S. 145, when his order under S. 144 has already spent its force, and his observations regarding possession will have little if any, effect upon the question of actual possession. (Dhavle, J.) Jager Nath Singh v. Ram Jas Singh.

AIR 1933 Pat 584 (2) : 6 RP 274 : 146 IC 557 : 35 Cr LJ 88.

——Ss. 145 and 144—Applicability.

S. 145 of the Code applies where a dispute as to possession of land can be conclusively determined; and S. 144 applies only where the posses-

CRIMINAL P. C. (V of 1898), S. 145 — 54. Ss. 145 144 & 107 compared — (b) Ss. 145 & 144

sion is undisputed. (Jwala Prasad, J.) Bhairo Gope v. Emperor.

AIR 1920 Pat 215 : 1 Pat LT 377 : 57 IC 662 : 21 Cr LJ 646.

——Ss. 145 and 144— Applicability— Dispute as to possession—Imminent breach of the peace.

When there is a dispute as to possession, S. 145 is the proper section under which action should be taken. But if the Magistrate is satisfied that one of the parties is in possession of and there is an imminent danger of a breach of the peace, it is incumbent on him to restrain the opposite party by an order under S. 144. (Jwala Prasad, J.) Bansi Singh v. Emperor.

AIR 1918 Pat 228 : 3 PLW 353 : 43 IC 401 : 19 Cr LJ 113.

——Ss. 144 and 145 — Dispute as to possession—Proper order.

Where there is dispute regarding land on the question of possession, the proper procedure is to pass an order under S. 145 and not under S. 144. (Mitra and Holmwood, JJ.) Parkar Mahton v. Ram Khelawan.

11 CWN 271 : 5 Cr LJ 76.

——Object of.

The object of S. 144 is not that orders should be made prescribing the holding of hats indefinitely within a certain area for two months. (Mitra and Holmwood, JJ.) Bidhu Ranjan Mazumdar v. Ramesh Chandra Rai.

11 CWN 223 : 5 Cr LJ 43.

55. Service and publication of preliminary order—Sub-Section (3).

(a) Omission to serve or publish the order—Cases where proceedings were held vitiated.

(b) Omission to serve or publish the order—Cases where proceedings were held not vitiated.

55. Service and publication of preliminary order—Sub-Section (3).

——S. 145 (1) — Parties to whom notice should issue.

At the stage of the preliminary order, notice can only go to persons mentioned in the application for action under S. 145 and not to anybody else when there is no allegation that anybody else was interested or was creating a dispute.

Hence, where an application for action under S. 145 gives no indication whatsoever that the person mentioned in it was acting as a manager or was acting for anybody else, notice cannot issue to anybody but him. (Kidwai, J.) Ali Shabber v. Haider Husain.

AIR 1953 All 49 : 1952 ALJ 611 : 1953 Cr LJ 215.

——Notice of proceeding against persons proceeded against is necessary. (Ranawat, J.) Udami v. The State.

ILR (1952) Raj 170.

——Notice on respondent.

In a case under S. 145, Criminal P. C., service

CRIMINAL P. C. (V of 1898)—55. Service and publication of preliminary order—Sub-s. (3)

of notice on the spot under the second part of S. 145 (3), does not dispense with ordinary service upon the respondent as required by the first part of that sub-section. (Addison, J.) Turab Ali Khan v. Shromani Gurdwara Prabandhak Committee.

AIR 1933 Lah 145 : Ind Rul (1933) Lah 356 : 143 IC 477 : 34 Cr LJ 616.

——Notice—Service, proof of.

A Magistrate is not justified in simply accepting the written return of a serving peon, without examining the peon, as to service of notice of the proceedings under S. 145 (1), Criminal P. C., nor is he justified in passing a final order as to possession on the evidence of a daffadar who is not a witness of either of the parties within the meaning of S. 145 (4) of the Code. (Pratt and Handley, JJ.) Jogendra Nath Rai v. Abu Shaikh.

8 CWN 719 : 1 Cr LJ 716.

——Service of notice of proceeding and copy of order —Magistrate's duty.

A Magistrate, before proceeding under S. 145, Cr. P. Code, is bound to satisfy himself that the notice of the proceeding and the copy of the order under Cl. (1) of that section drawn up by him were duly served upon the party proceeded against. He cannot proceed on the written statement of the second party as if the matter were ex parte against the first party. (Ghose and Stephen, JJ.) Sripati Charan Mundle v. Ram Kumar Bagdi.

8 CWN 76 : 1 Cr LJ 44.

55. Service and publication of preliminary order—Sub-Section (3).

(a) Omission to serve or publish the order—Cases where proceedings were held vitiated.

——Where no summons is served personally on the respondent or on an adult member of his family or affixed to his house, this in itself is sufficient to vitiate all subsequent proceedings. (Addison, J.) Turab Ali Khan v. Shromani Gurdwara Prabandhak Committeee.

AIR 1933 Lah 145 : Ind Rul (1933) Lah 356 : 143 IC 477 : 34 Cr LJ 616.

——Order without notice.

The provisions of S. 145 (1) are mandatory and consequently if no notice is issued as required and there is no finding that there was a danger of breach of peace, the order under S. 145 becomes ultra vires. AIR 1924 Lah 91, Rel, on. (Bhide, J.) Emperor v. Sis Ram.

AIR 1930 Lah 895 : 12 Lah LJ 147 : 1930 Cr C 991 : 32 Cr LJ 139.

——Where in a proceeding under S. 145 there is a total lack of evidence or even of circumstances from which a presumption can reasonably be drawn that a party had knowledge of the proceedings the Magistrate's procedure in going on with the case ex parte amounts to much more than a

CRIMINAL P.C. (V of 1898), S. 145—55. Service and publication of preliminary order — Sub-s. (3) technical irregularity and it is impossible to hold that the party was, or may not have been prejudiced thereby. AIR 1924 Nag 171; 33 Cal 68, (F. B.), Dist. (Findlay, C. J.) Sego Patel v. Parashram.

AIR 1927 Nag 234 : 101 IC 450 : 28 Cr LJ 418.

——Where no preliminary order, as required by S. 145, Sub-S. (1) is served on a party, nor is he given an opportunity to prove his possession over the subject of the dispute, he cannot be subjected to the final order passed by the Magistrate. (Wazir Hasan, A. J. C.) Mt. Maquim-un-nissa v. Mt. Ahmad-un-nissa.

AIR 1925 Oudh 605 : 90 IC 541 : 2 OWN 704 : 26 Cr LJ 1581.

——Where one of the members of one of the parties is not served with a notice the proceedings are bad so far as that member is concerned but the invalidity of the proceedings against one member does not necessarily invalidate the whole proceeding. (Macpherson, J.) Nandan Singh v. Siaram Singh.

AIR 1926 Pat 67 : 7 PLT 156 : 89 IC 151 : 26 Cr LJ 1287.

——Order without notice is a grave irregularity.

In a proceeding purporting to be under S. 145, Cr. P. C. (V of 1898), notice was not served upon the parties or their pleaders, nor was it served upon the locality, as is required by section 145, no written statement was filed by parties nor any evidence, oral or documentary, was adduced. Held, that the non-compliance of the aforesaid requirements constituted such a grave irregularity as, when it has caused a failure of justice or a prejudice to any party the order under S. 145 is vitiated and the jurisdiction of the Magistrate is affected and that the High Court has jurisdiction to set aside the order. Ram Sahay Chowdhury v. Deonandan Prasad. (4 P L W 183, followed.) (Jwala Prasad, J.) Basawan Pandey v. Tilak Gope.

AIR 1922 Pat 77 : 4 Pat LT 723 : 72 IC 345 : 1 Pat LR Cr 130 : 24 Cr LJ 345.

——S. 145 (1) and (3) — Order without notice—Parties not served.

In an enquiry under S. 145, Cr. P. C., both sides must be heard and if one of the parties to the enquiry is not served and the Magistrate proceeds with the case, there is a defect of jurisdiction and his order can be set aside in revision by the High Court. 53 IC 615, Foll. (Batten, A. J. C.) Tukaram Kunbi v. Panjab Rao.

AIR 1918 Nag 46 : 53 IC 720 : 20 Cr LJ 816.

——Decision without notice — No opportunity to party to put in written statement or adduce evidence — Revision.

Where it appears that a party to the dispute has had no opportunity of appearing and putting in his written statement the proceeding will be

CRIMINAL P. C. (V of 1998), S. 145—55. Service and publication of preliminary order — Sub-s. (3) set aside in revision. (Priaeaux, A. J. C.) Madho Prasad v. Jaggansi.

AIR 1918 Nag 44 : 53 IC 615 : 20 Cr LJ 775.

——S. 145 (6)—Order without notice.

An order under S. 145 (6) of the Cr. P. Code made without any notice to the party affected is entirely without jurisdiction. (Mullick, J.) Sheonandan Prasad Singh v. Wahidul Haq.

AIR 1917 Pat 71 : (1917) Pat HCC 200 : 43 IC 336 : 5 Pat LW 254 : 19 Cr LJ 112.

——Ss. 145 (3) and (4)—Decision without notice—Want of service of notice—Defect of jurisdiction—Interference by High Court.

Want of service of notice under S. 145 (3), Cr. P. Code is a grave irregularity which vitiates the proceedings. The High Court has jurisdiction to set aside an order under S. 145 Cl. (4) where the provisions in Cl. (3) are not complied with and the parties are prejudiced thereby. Cases reviewed. (Jwala Prasad, J.) Ram Sahai v. Deonandan Prasad.

AIR 1918 Pat 578 : 4 Pat LW 183 : 43 IC 103 : 19 Cr LJ 71.

——S. 145 Cl. (1)—Defects in procedure—Omission to pass order.

Where proceedings under S. 145 are irregular and the magistrate acts without jurisdiction the Chief Court can interfere in revision and an omission to serve or record the order under S. 145 Cl. (4) is an irregularity which will render proceedings liable to be set aside; a Magistrate, in case of forcible possession, must find the date of dispossession for every item of property. (Chevis, J.) Kaku v. Harnaman.

AIR 1917 Lah 171 : 28 PWR Cr 1917 : 40 IC 308 : 40 PR Cr 1917 : 18 Cr LJ 660.

——S. 145 (1).

Before passing an order under S. 145, Cr. P. C., the Magistrate failed to issue the preliminary order in writing and to serve a copy of the order on the parties. Held, that the final order under S. 145 was ultra vires. (Shahdin, J.) Budhan v. Ram Rakh Mal.

AIR 1915 Lah 232 : 169 PLR 1915 : 32 PWR Cr 1915 : 30 IC 452 : 16 Cr LJ 628.

——Order based upon police report—Legality.

An order declaring the possession of the petitioner on the basis of police report without instituting any proceeding and giving notice of the same to the parties, and hearing them is illegal. The Magistrate can declare one of the contending parties to be in possession of the property in dispute only after trying the question in Court according to the procedure laid down in S. 145, Cr. P. Code. (Abdur Rahim, J.) Pasupathi Mudali v. A. Subramanya Gurukkal.

6 MLT 91 : 2 Ind Cas 428 : 10 Cr LJ 6.

——Irregularity—Effect.

Where a Magistrate draws up a proceeding under S. 145, but does not serve any notice upon

CRIMINAL P. C. (V of 1898), S. 145 — 55. Service and publication of preliminary order — Sub-s. (3)

the first party in accordance with Sub-S. (3) and does not fix a notice on some conspicuous place at or near the subject of dispute, does not also receive a written statement from either party before he passes final order under S. 145 and there is no appearance on behalf of the first party and no opportunity is given to cite witnesses or to put in any documentary evidence, but on examining one witness on behalf of the second party the Magistrate holds that there is a likelihood of a breach of the peace and declares the second party to be in possession, the proceedings of the Magistrate are very irregular and must prejudice the first party. The irregularities justify interference by High Court. (Rampini and Sharfuddin, JJ.) Ahmed Chowdhry v. Parbati Charan Roy.

35 C 774 : 8 CLJ 71 : 12 CWN 848 : 8 Cr LJ 119.

——Procedure prescribed by the section to be strictly followed.

All the procedure prescribed in section must be strictly followed to make a proceeding under the section valid. If on the ground stated by the magistrate it is found by him that the respondent was ploughing the land, to annoy the complainant, who had a right to use the land for religious service, it would amount to a preliminary order specified in para 1 of the section. But that alone would not be sufficient to give him jurisdiction and his proceedings must be set aside for want of jurisdiction, where the other provisions relating to the service of the order on the parties, affixture of the same to a conspicuous place near the property and the hearing of the parties interested and taking of evidence have not been complied with. (Rattigan, J.) Abdulla Khan v. Gunda.

7 PR 1907 Cr : 24 PWR 1907 Cr : 71 PLR 1908 : 6 Cr LJ 113.

——S. 145 (3) (4)—Inquiry into possession—Publication of notice — The publication of a notice locally under Sub-S. (3), is a condition precedent to the exercise of a Magistrate's jurisdiction to make an inquiry under Sub-S. (4). Where there is failure to carry out the provisions of Sub-S. (3) there is no jurisdiction to make an enquiry as to possession under Sub-S. (4). (Pargiter and Woodroffe, JJ.) Nawab Khajah Solemollah Bahadur v. Ishan Chandra Dass Sarkar.

9 CWN 909 : 2 Cr LJ 569.

(Overruled in 33 Cal 68 : 2 Cr LJ (FB)).

——Failure to comply with Cl. (3).

The failure to publish a copy of the order in accordance with the provisions of the latter part of Cl. (3) of S. 145 affects the jurisdiction of court and the order should be set aside on that ground. Similarly where the proceedings show that there was no imminent danger of the breach of the peace, the proceedings are not justified.

CRIMINAL P. C. (V of 1898), S. 145 — 55. Service and publication of preliminary order — Sub-s. (3)

(Ameer Ali and Handley, JJ.) Janu Manjhi v. Maniruddin.

8 CWN 590 : 1 Cr LJ 529.

(Overruled in 33 Cal 68 : 2 Cr LJ 618 (FB))

55. Service and publication of preliminary order—Sub-Section (3)—

(b) Omission to serve or publish the order—Cases where proceedings were held not vitiated.

——S. 145 (3)—Omission to serve order.

Non-service of notice of the proceeding started under S. 145 on two out of the four brothers, who are presumably joint and belonging to the opposite party, though irregular will not vitiate the proceedings as they have been effectively represented by the two brothers before the Magistrate and there does not appear any failure of justice on account of the irregularity. (Ranadhir Singh, J.) Parmatma v. State.

AIR 1954 All 24 : 1953 AWRHC 468 : 1953 ALJ 601 : 1953 Cr LJ 1892.

——S. 145 (3)—Omission to serve or publish the order.

Where there is no proof that real injury has been sustained non-compliance with Sub-S. (3) of S. 145 cannot make the proceedings illegal. (Srinivasachari, J.) Abdullah v. Hanmanthappa.

AIR 1953 Hyd 286 : ILR (1953) Hyd 173 : 1953 Cr LJ 1862.

——S. 145 (1) (3)— Order under S. 145 (1) not served or published—Failure will not vitiate proceeding if no prejudice is caused. (Prejudice held not caused.) (Ram Labhaya, Ag. C. J.) Depu Kachari v. Padma Kanta Barua.

AIR 1952 Assam 185 : ILR (1952) 4 Assam 323 : 1952 Cr LJ 1693.

—S. 145 (4)— "Then"— Word applies to time or order of Magistrate's proceedings.

The word "then" applies only to the time or order of the Magistrate's proceedings and was not intended to deprive him of jurisdiction, if the notice had not been duly published. (Chaturvedi, J.) Ratan Singh v. Raghubir Singh.

AIR 1952 Madh B 165 : 1952 Cr LJ 1449.

——Ss. 145 (3) & 537—Non-publication of order — Effect.

If a trial is conducted in a manner expressly prohibited by the Code then alone the trial will be vitiated and S. 537 will not cure it.

The object of S. 145 is clearly to bring to an end by a summary process disputes relating to land etc., which are in their nature likely to end in breaches of the peace. Considering the main object with which the section was enacted, the only procedure expressly prohibited by the Code is when the Magistrate initiates proceedings under S. 145 without coming to a conclusion whether a dispute concerning the land in question exists which is likely to result in a breach of the peace.

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It cannot, therefore, be held that if the notice is not published in the manner prescribed by S. 145 (3) the Magistrate loses his jurisdiction to hold an inquiry into the question of possession. The non-publication of the order at or near the subject-matter of the dispute is an irregularity by reason of which the High Court can set aside the proceedings only if it is shown that any party has been prejudiced thereby. If objection to the non-publication of the order has not been taken at earlier stage it can safely be inferred therefrom that no party has been prejudiced in any manner: (Chaturvedi, J.) Ratan Singh v. Raghubir Singh.

AIR 1952 Madh B 165 : 1952 Cr LJ 1449.

——Ss. 145 (1), 537 — (i) Where preliminary order under S. 145, Criminal P. C., does not fulfil the requirements of S. 145 (1), Criminal P. C.. and notice is not served on one of the opposite parties or affixed to some conspicuous place at or near the subject of dispute, the proceedings cannot be quashed unless there has been a failure of justice or prejudice to any party: 54 IA 96, Foll.; AIR (23) 1936 Mad 824; AIR (25) 1938 Lah. 345 and AIR (25) 1938 Rang 229, Dissent.; AIR (14) 1927 All 286 ; AIR (26) 1939 Lah 233 ; 14 IC 760 ; AIR (5) 1918 Pat 528 and AIR (9) 1922 Pat 77, Discussed.

(ii) When notice under S. 145 (1) is not served on one of the opposite parties but he presents himself in Court on the date fixed, puts in a written statement and adduces evidence.

Held that under these circumstances there is no failure of justice and no prejudice is caused to any party (Sharma and Ibrahim, JJ.) Ram Charan v. Chhotelal.

1948 JLR 151.

——Failure to serve notice or affix copy of preliminary order to conspicuous place near land—No prejudice caused—Defect is curable under S. 537 and proceedings are not vitiated. (Din Muhammad, J.) Ratan v. Teka.

AIR 1939 Lah 233 : 40 Cr LJ 784.

——Where the Magistrate failed to serve a copy of the preliminary order under S. 145, Cl. 1 and to post the order on the land.

Held, that these were irregularities curable by S. 537. (Carr, J.) Maung Mauk v. Maung Po Yin.

AIR 1925 Rang 270 : 94 IC 708 : 3 Rang 169 : 27 Cr LJ 660.

——Omission to publish the notice under subsection (3) is not fatal to the Magistrate's jurisdiction, under the section. Nor does a notice without the grounds or without specifying the land in dispute, though irregular, vitiate the proceedings particularly where the parties perfectly knew the property in dispute. (Kendall, A. J. C.) Parbhu Dayal v. Emperor.

AIR 1925 Oudh 152 : 81 IC 963 : 25 Cr LJ 1139.

CRIMINAL P. C. (V of 1898), S. 145 — 55. Service and publication of preliminary order — Sub-s. (3)

——Where the parties concerned had full knowledge of the proceedings from start to finish, an omission to serve notice on them and to affix a copy of the Court's order as required by the Sub-S. (3) is an irregularity curable by S. 537. (Hallifax, A. J. C.) Bhure Khan v. Fakira.

AIR 1924 Nag 171 : 76 IC 303 : 25 Cr LJ 159.

——S. 145 (1) and (3)—Omission to record order in writing or serve copies to parties—Effect.

It is not always that an omission to frame an order in writing as required by S. 145 (1) or to serve a copy of the order on parties as required by S. 145 (3) invalidates the proceedings under S. 145. Where the parties appeared before a Magistrate who explained matters to them fully and they evidently understood everything that was requisite. Held, that there was no sufficient cause for interference. (Chevis, J.) Nur Baksh v. Emperor.

AIR 1917 Lah 35 : 26 PWR Cr 1917 : 39 IC 1001 : 18 Cr LJ 633.

——Omission to record preliminary order— Omission to affix copy of it is not fatal to the Magistrate's jurisdiction, where an order directing to file written statement has been recorded in the presence of parties who have understood the nature of the proceedings. (Johnstone, J.) Mahommed Sharief v. Dhanpat Rai.

AIR 1914 Lah 295 : 1914 PLR 68 : 23 IC 487 : 15 PWR Cr 1914 : 15 Cr LJ 279.

——Non-compliance with sub-s. (3).

The notice under sub-s. (3) is only necessary to give information to all concerned as to the proceedings contemplated to be taken by the Court. Where all the parties interested are fully cognizant of the action taken by the Magistrate the omission to publish the notice does not prejudice the parties in any way and does not deprive the Magistrate to enquire. (Evans, AJC.) Iklas Kunwar v. Raghuraj Bahadur Singh.

4 Ind Cas 876 : 12 OC 400 : 11 Cr LJ 69.

——Notice to party admitted to be in possession.

Held that an order passed under S. 145 would not be treated as improper on the ground that same person admitted to be in possession was not served with a notice when that person has not chosen to appear and question the order. It would not be right to allow another party to take that objection. (Subramania Iyer, J.) In re Chinnappudayan.

3 MLT 18 : 30 M 548 : 7 Cr LJ 28.

——Ss. 145 and 537—Parties present—Notice not pasted—Irregularity——Effect of order.

If the parties to a proceeding under S. 145 of the Code had notice of the proceedings, and had their cases fully heard by the Magistrate, the order should not be set aside in revision on the ground that the parties were not personally served, and no notice was fixed at the disputed

CRIMINAL P. C. (V of 1898), S. 145 — 55. Service and publication of preliminary order — Sub-s. (3)

property. (Richards, J.) Debi Prasad v. Sheodat Rai.

4 ALJ 705 : 30 A 41 : AWN 1907, 265 : 6 Cr LJ 352.

——Non-compliance with sub-s. (3)—Effect—Interference under S. 15 Charter Act 1861: 9 Cal WN 909 : 2 Cr LJ 569 and 8 Cal WN 590 : 1 Cr LJ 529, Overruled.

The word "then" in sub-s. (4) applies only to the time of order of the Magistrate's proceedings.

Omission to publish a notice under S. 145 (3) is not an illegality which deprives the Magistrate of his jurisdiction. Sub-s. (3) is not mandatory but directory and a matter of procedure only. Jurisdiction of the Court arises as soon as sub-s. (1) is complied with and it is not destroyed by non-observance with the provisions of sub-s. (3). The object of publishing notice under sub-s. (3) is to reach all persons interested in the subject matter and unless it is shown that some one interested has been materially prejudiced by the omission to publish notice under sub-s. (3), the High Court will not interfere under S. 15 of the Charter Act, 1861.

Per Ghose J.— Sub-s. (3) is a matter of procedure but the procedure is mandatory. Non-observance does not destroy jurisdiction. It is illegal exercise of jurisdiction. High Court will interfere only when there is prejudice caused. 9 Cal WN 909 : 2 Cr LJ 539 and 8 Cal WN 590: 1 Cr LJ 529 overruled. (Maclean C. J., Ghose, Rampini, Pratt, and Henderson, JJ.) Sukh Lal Sheikh v. Tara Chand.

2 CLJ 241 : 33 Cal 68 : 9 CWN 1046 : 2 Cr LJ 618 (FB).

——Omission to serve a copy of the preliminary order on the applicant is a mere irregularity, not affecting the jurisdiction. (Mr. Wells) Bidya Dhar v. Jagdish Parshad.

7 OC 334 : 1 Cr LJ 1055.

56. Statement of grounds in the preliminary order.

(a) Omission to state grounds, effect of—Cases where omission held affected jurisdiction.

(b) Omission to state grounds, effect of—Cases where omission held did not affect jurisdiction.

56. Statements of grounds in the preliminary order.

——Statement of grounds.

Under S. 145 the Magistrate has to state the grounds for his being satisfied about the existence of a dispute likely to cause the breach of peace; and not in a case where he is not so satisfied. (P. L. Bhargava, J.) Mahadeo v. Mela Ram

1951 AWR (HC) 483.

——Under S. 145 (1) it is mandatory upon the Magistrate to make an order in writing stating the grounds of his being satisfied that there is a dispute likely to cause a breach of the peace concerning the immovable property and requiring the parties concerned to put in written statement of their respective claims regarding the fact of actual possession of the dispute and property within a time which may be fixed by him. (Dave, J.) Narotam v. Kamlabai.

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1951 Raj LW 55.

——S.145 (1)—Magistrate's failure to give reasons for his satisfaction.

Per Meredith J.—Where the Magistrate, who is responsible for the maintenance of the peace within his jurisdiction, has expressly stated that a danger of a breach of the peace necessitating action under S. 145 exists, the High Court should not lightly interfere on the ground that the Magistrate has not given grounds of his being so satisfied, as required by S. 145 (1). (Meredith, Sinha and Das JJ.) S .M. Yaqub v. T. N. Basu.

AIR 1949 Pat 146 : 30 PLT 41 : 50 Cr LJ 299.

——Recording of reasons—Absence of—Effect.

Under S. 145 it is mandatory upon the Magistrate to record the grounds of his belief. If without giving any reasons and without even stating that he is satisfied that there is any apprehension of a breach of the peace the Magistrate passes an order under S. 145 (1) the order is without jurisdiction. (Walford, J.) Lakhpat v. Mt. Mahrana.

AIR 1947 Oudh 159 : 1947 OACC 40 : 1947 AWR CC 40 : 1947 OWN 139 : 230 IC 229.

——Condition precedent for proceeding under section.

The Legislature has laid it down in clear words that whenever a matter is brought to the Court of a Magistrate, it is the Magistrate's duty not only to be satisfied that there is a dispute which is likely to cause a breach of the peace, but also to make an order in writing stating the grounds of his being so satisfied before he can require the parties to appear before him. If he is not satisfied that a dispute likely to cause a breach of the peace exists, he has no jurisdiction under the section. (Verma, J.) Mohd. Ishaq v. Emperor.

AIR 1945 All 60 : 1944 OWN (HC) 230 : ILR (1944) All 727 : 1945 AWR (HC) 294 : 218 IC 397 : 46 Cr LJ 504.

——Proceedings under S. 145 — Failure to state grounds of satisfaction—Trial, if vitiated.

The failure of the Magistrate to set forth explicitly the grounds of his being satisfied will not vitiate the proceedings if there was otherwise a substantial compliance with the requirements of S. 145.

Per Mehta, A. J. C.—The non-compliance with the requirement of stating the grounds if it has occasioned no injustice does not necessarily take away the jurisdiction of the Magistrate to proceed under Chap. XII, and the reason why the grounds are primarily required to be stated in the order is that in case the matter comes up

CRIMINAL P. C. (V of 1898), S. 145—56. Statement of grounds in the preliminary order

subsequently before a High Court, it can be seen whether there was or was not any justification for recourse to this sort of summary proceedings for deciding a question which is more or less of a civil nature, namely, the question of the right to the immediate possession of some immovable property. (Ferrers, J. C. and Mehta, A. J. C.) Natho Khan v. Emperor.

AIR 1932 Sind 145 : 26 SLR 353 : Ind Rul (1933) Sind 67 : 141 IC 628 : 34 Cr LJ 216.

——The Magistrate himself must be satisfied that there is likelihood of a breach of the peace. He must not proceed automatically on police report. His satisfaction is the foundation of the jurisdiction. Both the fact of his being satisfied and the grounds of satisfaction must appear in the first order directing the issue of notice. (Kincaid, A. J. C.) Emperor v. Ganikhan.

AIR 1928 Nag 81 : 28 Cr LJ 929.

——S. 145 (1) requires that a Magistrate has to satisfy himself "that a dispute likely to cause a breach of peace exists concerning any land" and has then to "make an order in writing, stating the grounds of his being so satisfied." Failure to comply with the provision makes the Magistrate's order without jurisdiction. (Broadway, J.) Sher Khan v. Dr. Fazal Illahi.

AIR 1925 Lah 368 : 88 IC 601 : 7 LLJ 173 : 26 PLR 187 : 26 Cr LJ 1177.

——Duty of Magistrates.

To proceed under the section relating to breach of peace a Magistrate should give grounds of his being satisfied to such proceeding. (May Oung, J.) Ma Ma Gyi v. Emperor.

AIR 1924 Rang 178 : 81 IC 985 : 2 Bur LJ 295 : 25 Cr LJ 1161.

——Breach of the peace—Enquiry—Evidence.

Under S. 145, Cr. P. Code, a Magistrate has no jurisdiction to make an enquiry as to possession, still less any final order, unless and until he is satisfied of the likelihood of a breach of the peace and it is absolutely essential that the fact and grounds of his being so satisfied should appear in his first order directing the issue of a notice, and the grounds stated must be such as to satisfy a Court of revision before which the case may be brought by any of the parties concerned. 12 CPLR 2 Cr, foll. (Kotval, A. J. C.) Asaram v. Chotulal.

AIR 1921 Nag 100 : 64 IC 288 : 22 Cr LJ 768.

——Under S. 145 the Magistrate must first make an order in writing stating the grounds of his being satisfied that a dispute likely to cause a breach of the peace exists. (Walsh, J). Nathu Ram v. Emperor.

AIR 1917 All 262 : 15 ALJ 270 : 18 Cr LJ 557.

——Omission of grounds in the order.

Jurisdiction of a Magistrate is not affected by his not recording grounds in his preliminary order under S. 145. (Kendall and Muhammad Ali,

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A. J. Cs.) Udai Bhan Pratab Singh v. Ram Samaja.

AIR 1917 Oudh 400 : 3 OLJ 546 : 19 OC 136 : 37 IC 308 : 18 Cr LJ 100.

——Dispute relating to land—Breach of the peace—Statement of grounds of belief, sufficiency of.

In proceedings under S. 145, if the report points out a dispute relating to land likely to lead to a breach of the peace and the Magistrate believes it and issues the preliminary order on such report only he acquires sufficient jurisdiction to act under the section and he need not set any further reasons for his being satisfied as to the existence of a dispute. His order under the section is final and the High Court will not scrutinise the said reasons. (Krishnan, J.) Krishnappa Naidu v. Alamelu Ammal.

AIR 1917 Mad 610 : 5 LW 165 : 36 IC 855 : 18 Cr LJ 23.

——Order under cl. (1)—Magistrate must state the grounds of his being satisfied as to likelihood of breach of the peace.

The Magistrate must in the initiatory order under S. 145, cl. 1, state the grounds of his being satisfied as to the likelihood of a breach of the peace. The final order directing one of the parties to be retained in possession would be without jurisdiction in case the grounds are not mentioned. Even where a Magistrate acts upon a police report or upon other information, he is still bound to state the grounds upon which he is satisfied. In cases initiated upon a police report or other information which has been reduced to writing, reference can be made to the materials upon which the Magistrate acted to ascertain whether there were in fact grounds upon which he might have acted, but even in such a case the Magistrate is bound to state the grounds of his satisfaction. (Henderson and Geidt, JJ.) Nittyanand Roy v. Pareshnath Sen.

32 C 771 : 9 CWN 621 : 2 Cr LJ 342.

——S. 145, cls. 1 and 3—Irregularities in proceedings—Effect.

The contention that a Magistrate had divested himself of jurisdiction (1) by not having in his order under S. 145, Cr. P. Code, stated the grounds for his belief that there was likely to be a breach of the peace and (2) by not having, under cl. 3 of that section, served a copy on the applicant, is not correct as these are mere irregularities in the proceedings, which do not in the least affect the jurisdiction. (Mr. Wells) Bidya Dhar v. Jagdish Pershad.

7 OC 334 : 1 Cr LJ 1055.

56. Statements of grounds in the preliminary Order—

(a) Omission to state grounds, effect of—Cases where omission held affected jurisdiction.

CRIMINAL P. C. (V of 1898), S. 145—56. Statements of grounds in the preliminary order — (a) Omission .... jurisdiction

——Failure to record reasons for finding that there was likelihood of breach of peace—Order is not proper—Previous order under S. 211 effect of.

There must be something on the record to show that the Magistrate did apply his mind to the facts of the case, and was so satisfied to justify an action under S. 145 in order to get jurisdiction. (Ranawat, J.) Udami v. The State.

ILR (1952) Raj 170.

——Ss. 145, 537—Omission to state grounds for satisfaction as to existence of dispute —Effect.

The omission to comply with the express direction of the statute that the Magistrate shall make an order stating the grounds on which he is satisfied that a dispute likely to occasion a breach of the peace exists cannot be treated as a mere irregularity, curable under S. 537. Where, therefore, neither the notice issued to the parties nor the order passed by the Magistrate after hearing the parties indicated that he was satisfied as to the existence of any dispute likely to cause breach of the peace, the Magistrate could not be held to have jurisdiction to proceed with the complaint. (Agarwala, C. J.) Dirgopal Singh v. Rambrich Singh.

AIR 1951 Pat 412 : 52 Cr LJ 303.

——Order under S. 145 (1)— No grounds stated of being satisfied as to breach of peace—Order, if valid.

An order under S. 145 (1), Cr. P. C., in which the Magistrate does not state the grounds for his being satisfied that a dispute likely to cause the breach of the peace existed, cannot be said to comply with the provisions of S. 145 (1). (Davis, C. J. and Weston, J.) Jam Bhambho Khan v. Makhdum Muhammad Hassan.

AIR 1942 Sind 117 (118) : 15 RS 55 : ILR (1942) Kar 120 : 202 IC 617 : 43 Cr LJ 876.

——No ground of Magistrate being satisfied—Also non-compliance with S. 145 (1)— Proceeding, if vitiated.

When making an order on an application under S. 145, Cr. P. C., the Magistrate ought to comply with the provisions of S. 145, Cl. 1, and he ought to make an order in writing stating the grounds of his being satisfied that a dispute likely to cause a breach of the peace existed. This failure, together with the fact that the Magistrate actually has no grounds whatsoever for being so satisfied, vitiates his whole proceeding and makes them illegal as being taken without jurisdiction. (Mackney, J.) A Meah v. Steel Brothers and Co., Ltd.

AIR 1938 Rang 229 : 11 R Rang 40 : 176 IC 266: 39 Cr LJ 708.

——The provisions of S. 145 (1), Criminal P. C., requiring Magistrate to make an order in writing stating the grounds for his being satisfied that a dispute likely to cause a breach of the peace exists, are mandatory. (Pullan, J.) Emperor

CRIMINAL P. C. (V of 1898), S. 145—56. Statements of grounds in the preliminary order — (a) Omission .... jurisdiction

v. Hiralal.

AIR 1933 All 96 : 34 Cr LJ 449.

——Magistrate must give reasons.

Where Magistrate without stating any grounds said that he was satisfied that there was a dispute likely to cause a breach of the peace.

Held, he failed to comply with the provisions of the law and his subsequent proceedings were without jurisdiction. Litigants often resort to S. 145 as an easy way of getting possession without the expense, delay and trouble of a Civil suit and Courts should be on guard against an abuse of legal powers. (May Oung, J.) Ma Ma Gyi v. Emperor.

AIR 1924 Rang 178 : 81 IC 985 : 2 Bur LJ 295 : 25 Cr LJ 1161.

——Duty of Magistrate—Judgment—Omission to record reasons for decision — Proceedings under Ss. 366 and 367.

Whether Ss. 366 and 371 do or do not apply to proceedings under S. 145 the Magistrate has to give reasons for his decision sufficient to enable the High Court to determine whether he has complied with the terms of sub-section (4) and directed his mind to the consideration of the evidence adduced and whether in making his final order he has acted within or without jurisdiction. The statement of reasons, that certain number of witnesses had been heard and that the oral and documentary evidence of both parties had been considered in the light of the arguments addressed, is not sufficient. (Teunon, and Suhrawardy, JJ.) Bhuban Chandra Hazra v. Nibaran Chandra Santra.

AIR 1922 Cal 382 (1) : 49 Cal 187 : 25 CWN 887 : 34 CLJ 125 : 62 IC 323 : 22 Cr LJ 499.

——Omission to state grounds of satisfaction.

The preliminary order under S. 145 (1) in which the Magistrate does not clearly state the grounds on which he is satisfied that there is likelihood of breach of peace, is materially defective. (Munro and Sankaran Nair, JJ.) Posukha Kulla v. Tandalagara Chikka Hiria.

4 MLT 213 : 8 Cr LJ 399.

——Non-compliance.

Where there is on the record no order in writing by the Magistrate as required by S. 145 stating the grounds of his being satisfied that a dispute likely to cause a breach of the peace exists concerning immoveable property, the proceedings are not such as are justified by Ch. XII of the Code, and may be set aside in revision as entirely without jurisdiction. (Knox, J.) Bihari Lal v. Chajju.

1907 AWN 49 : 2 ALJ 272 : 2 Cr LJ 222.

56. Statements or gorunds in the preliminary order—

(b) Omission to state grounds, effect of— Cases where omission held did not affect jurisdiction.

CRIMINAL P. C. (V of 1898), S. 145—56. Statements of grounds in the preliminary order — (b) Omission to state grounds etc.

——Ss. 145 (1), 537 — Order under — Magistrate satisfied about dispute—Omission to state grounds does not vitiate the order. (Brij Mohan Lall, J.) Vidya Ram v. Ganga Sahai.

AIR 1953 All 455 : 1952 ALJ 221 : 1952 RD (HC) 17 : 1953 Cr LJ 1009.

——Ss. 145 (1) and 537 — Preliminary order — Omission to state grounds of satisfaction—Effect —Irregularity, if affects final order.

Where the preliminary order under S. 145 (1), Criminal P. C., does not state the grounds of satisfaction as to the existence of a dispute likely to cause a breach of the peace the order is undoubtedly a defective order and if challenged in proper time, i.e., about the time when written statements are required to be filed or evidence led, it will be corrected or set aside.

Such omission is, however, only an irregularity in the proceedings and does not affect the Magistrate's jurisdiction and, therefore, when it is complained of at the end of the proceedings, the validity of the final order must be judged by the test of prejudice.

Hence, in a case where in spite of the omission to state the grounds in the preliminary order or to make a reference to the police report which contained the grounds, the parties did not complain of it and adduced evidence on all questions relevant to S. 145 and the point was also not raised in the application for reference where the final order was attacked on a multitude of grounds, but was raised only for the first time at the stage of revision before the High Court, it must be taken that the applicant was not prejudiced by the defective order as he was clearly aware of the grounds and put up a defence against them on an elaborate scale. (Chakravartti and Sinha, JJ.) Khudiram Mandal v. Jitendra Nath.

AIR 1952 Cal 713 : 56 CWN 608 : 1952 Cr LJ 1411.

——Ss. 145 and 537—Non-compliance with provisions of S. 145.

The mere failure to state the reasons for a preliminary order or to draw up a formal preliminary order in accordance with the provisions of S. 145 (1) or to serve the order under S. 145 (3) is nothing more than a mere irregularity not sufficient to vitiate the subsequent proceedings where no prejudice is caused. (Das, J.) Wazir Mahton v. Badri Mahton.

AIR 1950 Pat 372 : 1950 AWR Sup 77 : 51 Cr LJ 1365.

——S. 145 (1)— Preliminary order not disclosing reasons for satisfaction — Order based on police report —Reasons for satisfaction held those contained in police report—No prejudice held caused. (Agarwala, J.) Shankar v. Rex.

AIR 1950 All 274 : 1950 ALJ 209 : 1950 AWR 388 : 51 Cr LJ 769.

CRIMINAL P. C. (V of 1898), S. 145—56. Statements of grounds in the preliminary order—(b) Omission to state grounds etc.

——Preliminary order under S. 145 — Duty of Magistrate to record reasons how he was satisfied as to likelihood of breach of peace—Omission to do so—Irregularity, if cured.

In proceedings under S. 145, Criminal P. C., though it is desirable for a Magistrate to record in his preliminary order, at any rate briefly, reasons why he is satisfied that a dispute likely to cause a breach of peace exists concerning any land within the local limits of his jurisdiction, the omission to do so would not divest him of jurisdiction, and that at most it would be an irregularity curable by S. 537, Criminal P. C. (Staples, A. J. C.) Emperor v. Narsingdas Gangadhar.

AIR 1934 Nag 112 : 7 RN 60 : 30 NLR 311 : 151 IC 348 : 35 Cr LJ 1381.

——Ss. 145 (1), 537—Omission to record order in strict accordance with S. 145 (1)—Effect.

The Magistrate's omission to record in his order under S. 145 (1), Criminal P. C., the grounds of his being satisfied that a dispute likely to cause a breach of the peace exists concerning some immovable property will not vitiate the subsequent proceedings unless such omission has caused a failure of justice. (King and Thom, JJ.) Bramha Singh v. Emperor.

AIR 1932 All 681 : 54 All 1002 : (1932) ALJ 865 : Ind Rul (1933) All 131 : 142 IC 532 : 34 Cr LJ 425.

——Omission to comply with S. 145 (1)—Validity —Illegality, if cured by S. 537.

The omission on the part of the Magistrate to record the fact that he was satisfied that a dispute likely to cause a breach of the peace existed and further to record the grounds on which he was so satisfied, does not deprive a Magistrate of his jurisdiction to proceed with the case. Nor is it an illegality which cannot be cured by S. 537, Criminal P. C. (Mukerji, Actg. C. J., Young and King JJ.) Kapoor Chand v. Suraj Prasad.

AIR 1933 All 264 : (1933) ALJ 188 : Ind Rul (1933) All 125 : 55 All 301 : 142 IC 537 : 34 Cr LJ 414 (FB).

——Where an enquiry proves that there is a dispute which may lead to bloodshed and where a Magistrate has taken effective steps under S. 145 to abate temporarily the cause of dispute, his order should not be set aside, thereby reviving the conditions he is specifically ordered to remedy, merely because he omitted to put in writing the grounds which had caused him so to act. AIR 1927 P. C. 44, Foll. (Doyle, J.) Maung Pu v. Maung Chit Pyu.

AIR 1927 Rang 177 : 102 IC 911 : 5 Rang 129 : 8 AI Cr R 241 : 28 Cr LJ 623.

——Omission to state grounds.

An omission to record reasons for holding that there is a likelihood of a breach of the peace

CRIMINAL P. C. (V of 1898), S. 145—56. Statements of grounds in the preliminary order—(b) Omission to state grounds etc.

though a culpable irregularity does not oust the jurisdiction of the Magistrate. (Ayling and Coutts Trotter, JJ.) Velu Malavarayan v. Kuppuswami Pillai.

AIR 1920 Mad 233 : 59 IC 378 : 12 MLW 315 : 22 Cr LJ 90.

——Reasons for finding as to existence of danger of breach of peace.

The magistrate's failure to record his reasons for thinking that there is danger of the breach of the peace, though a serious irregularity, does not affect his jurisdiction. (Sadasiva Aiyar and Napier, JJ.) Gaddam Penchulu Reddi In re.

AIR 1919 Mad 620 : 42 Mad 96 : 35 MLJ 686 : 9 MLW 237 : 20 Cr LJ 90.

——Omission of grounds.

A Magistrate is not required to set out his grounds of belief in the notice issued under the section. (Krishnan, J.) In re Medai Dhalavoy Sirumalayappa Mudaliar.

AIR 1918 Mad 1203 : 37 IC 524 : 18 Cr LJ 156.

——Preliminary order under S. 145 defective — Both parties cognizant of facts in dispute — Danger of a breach of the peace—No prejudice.

Where both the parties to proceedings under S. 145, themselves inform a Magistrate that there is a danger of the breach of the peace and the Magistrate acting on that information makes the initial order without recording his reasons in full, his final order is not without jurisdiction, inasmuch as the parties are not prejudiced in any way. (Knox and Karamat Husain, JJ.) Ganga Saran Singh v. Bhagwat Prasad.

5 Ind Cas 471 : 7 ALJ 53 : 11 Cr LJ 141.

——Initiatory order not setting forth magistrate's reason explicitly and clearly—Effect.

The fact that the magistrate did not explicitly and clearly state in his initiatory order the grounds on which he was satisfied that breach of the peace was imminent does not render his order under the section one without jurisdiction where it had to be passed under circumstances in which it was the most proper order to pass. Such being the case that order whether right or wrong cannot be interfered with in revision. (Evans, A. J. C.) Iklas Kunwar v. Raghuraj Bahadur Singh.

4 Ind Cas 876 : 12 OC 400 : 11 Cr LJ 69.

——Ss. 145, 439, 537—Omission to state grounds.

Where an order by a Magistrate, under S. 145 does not state the grounds on which he came to the conclusion that there was a dispute likely to cause a breach of the peace, that is not a ground for holding that the proceedings are void. That would, at the most, be an irregularity, and the High Court would not interfere unless the petitioner has been prejudiced. (Subramania Iyer, J.) In re Chinappudayan.

3 MLT 18 : 30 M 548 : 7 Cr LJ 28.

CRIMINAL P. C. (V of 1898), S. 145—56. Statements of grounds in the preliminary order—(b) Omission to state grounds etc.

——Omission to state grounds in initial order—Jurisdiction.

Failure to state in the initial order the grounds, on which the magistrate is satisfied of the existence of a dispute likely to lead to a breach of the peace, although a defect, does not affect the jurisdiction of the Court. (Wallis, J.) Posuka Kulla v. Tandalagara Chikka Hina.

17 MLJ 449 : 6 Cr LJ 345.

——S. 145 (1) — Omission to expressly state the grounds of the order — Reference to a portion containing such grounds, effect of.

In an order made under S. 145 (1) of the Code, the Magistrate omitted to state in detail the grounds for his conclusion that there was a likelihood of a breach of the peace. The order however referred to the petition in which the grounds were mentioned and there was no denial of the same by the counter-petitioners.

Held, that there was substantial compliance with the said S. 145 (1) of the Code and no irregularity which would affect the validity of the order. (Subramania Aiyar, J.) Sayid Mahomed Ghous Sahib v. Sayid Khadir Badshaw Saheb.

16 MLJ 148 : 3 Cr LJ 487.

——Ss. 145 and 439— Order under— Grounds not sufficiently stated—Interference in revision.

Where a Magistrate passes an order under S. 145 under circumstances in which the passing of such order was proper, the High Court would decline to interfere in revision upon the ground merely that the preliminary order did not set forth, as explicitly as it might have set forth, the reasons which satisfied the Magistrate that there was a likelihood of a breach of the peace, when there is a substantial compliance with the requirements of the section. (Richards, J.) Har Prasad v. Pandurang.

AWN 1905, 260 : 3 Cr LJ 48.

——S. 145 (1)—Grounds to satisfy Magistrate as to necessity of taking proceedings—Omission to state grounds— Reference in the order to police report.

An initial order made by a Magistrate under S. 145, Cl. 1, is not defective, because it is not self-contained and does not state in express terms the grounds upon which he is satisfied that a dispute likely to cause a breach of the peace exists, when such grounds appear in the police report on which the order is founded and to which it makes reference. In such a case there is substantial compliance with Sub-S. 1 of S. 145. (Francis W. Maclean, C. J., Ghose, Rampini, Pratt and Henderson, JJ.) Khosh Mahomed Sirkar v. Nazir Mahomed.

33 C 352 : 9 CWN 1065 : 2 CLJ 259 : 2 Cr LJ 637 (F.B.).

CRIMINAL P. C. (V of 1898), S. 145

57. Subject of dispute.

See also (1) Note 28.—Joint possession and (2) Note 29.—"Land or water or the boundaries thereof".

(a) Description of subject-matter.

(b) Dispute as to portion.

(c) Joint inquiry.

(d) Moveable property.

(e) Undivided share

57. Subject of dispute—

(a) Description of subject-matter.

——S. 145 (6)—Identity of land in dispute.

Report or other information not stating identity of land and also material not placed before Magistrate to ascertain its identity— Before passing any order under section he should ascertain exact boundaries; or before passing final order he should at least take evidence on the point. (Mallappa, J.) Lingegowda v. Chikka Nilegowda.

AIR 1953 Mys 131 : ILR (1953) Mys 315 : 1953 Cr LJ 1530.

——S. 145 (1) — Preliminary order reciting that Magistrate was satisfied as to existence of dispute which was likely to cause breach of peace—Order based on police report which was expressly referred — Police report containing ground justifying action under S. 145 — Report describing land in dispute and nature of dispute— Parties aware of description of land— Accurate reference in order and notice, held did not prejudice the opposite party. (Ram Labhaya, Ag. C. J.) Depu Kachari v. Padma Kanta Barua.

AIR 1952 Assam 185 : ILR (1952) 4 Assam 323 : 1952 Cr LJ 1693.

——S. 145 (1)—Subject of dispute—Misdescription of property in preliminary order—Effect.

Where in spite of the misdescription of the property in dispute the parties knew exactly what property was in dispute and dealt with the same in their pleadings and adduced a mass of evidence. the misdescription of the property will amount to only an irregularity not vitiating the final order and it cannot be a ground for interference in revision as it has not caused any prejudice. (Chakravarti and Sinha, JJ.) Khudiram Mandal v. Jitendra Nath.

AIR 1952 Cal 713 : 56 CWN 608 : 1952 Cr LJ 1411.

——The subject-matter of dispute must be ascertained definitely and described clearly in the preliminary order. Absence of clear specification of the subject of dispute is a vital defect and the final order passed in the proceeding can have no meaning, unless it is known for certain what is the subject of dispute in respect of which the final order has been passed. (Das, J.) Khartar Sao v. Pradip Singh.

AIR 1952 Pat 234 : 1952 Cr LJ 699.

——S. 145 (1)—Omission to specify locality.

CRIMINAL P. C. (V of 1898), S. 145—57. Subject of dispute—(a) Description of subject-matter

Where the parties fully knew what the disputed plots were, the mere fact that the Magistrate did not specifically mention them, does not vitiate the order. (Sultan Ahmad, J.) Jhaman Mahton v. Thakuri Mahton.

AIR 1920 Pat 219 : 1 Pat LT 369 : 2 UPLR (Pat) 192 : 57 IC 449 : 21 Cr LJ 625.

——Absence of clear specification of the subject of dispute is a serious defect. (Choudhuri and Newbould, JJ.) Sib Narayan Mookerjee v. Satish Chandra Ghosal.

AIR 1920 Cal 344 : 24 CWN 621 : 21 Cr LJ 593.

——Insufficient description of property.

Where the parties knew perfectly well the exact extent of land with respect to which the dispute had arisen the fact that the initiatory order did not set forth with sufficient accuracy the land in dispute does not deprive the magistrate of jurisdiction. (Evans, A. J. C.) Iklas Kunwar v. Raghuraj Bahadur Singh.

4 Ind Cas 876 : 12 OC 400 : 11 Cr LJ 69.

——The subject-matter of the dispute must be clearly determined before a proceeding under S. 145 is drawn up. (Mitra and Ormond. JJ.) Maharaja Surajkanta Acharja v. Maharaja Jagadindra Nath Roy Bahadur.

11 CWN 198 : 5 Cr LJ 32.

57. Subject of dispute—

(b) Dispute as to portion.

——S. 145 is merely intended to prevent a breach of the peace and if the Magistrate thinks it sufficient to include a portion of the land which is the subject of the Police report he can do so. The rule that if a suit is brought only in respect of a portion of the land claimed, a subsequent suit for the remainder is barred is not applicable to proceedings under this section. (Chapman, J.) Mukhan Singh v. Ramasarup Singh.

AIR 1917 Pat 435 : 40 IC 692 : 18 Cr LJ 692.

57. Subject of dispute—

(c) Joint inquiry.

——Landlord claiming to be in possession of several plots—Several tenants putting rival claims—One enquiry is not illegal—Failure of Magistrate to consider case of each individual tenant—Order cannot be interfered with in absence of prejudice.

One inquiry under S. 145 in a case in which the landlord claims a large number of plots to be in his possession while different sets of tenants claim different plots in their respective possession is not illegal or necessarily irregular; and when there is such a combination of claims of different sets of raiyats against one landlord in one inquiry, the question of prejudice will have to be gone into:

Consequently, the failure of the Magistrate to consider the case of each individual tenant in such a case will not be a ground for interfering with an order under S. 145 when no prejudice is

CRIMINAL P. C. (V of 1898), S. 145 —57. Subject of dispute – (c) Joint inquiry

caused thereby. (Varma, J.) Leela Singh v. B. P. Singh.

AIR 1946 Pat 389 : 1946 PWN 85 : 13 BR 8 : 227 IC 157 : 27 PLT 484 : 47 Cr LJ 1013.

——Claim by landlord for possession of number of plots—Various tenants claiming different plots separately—Amalgamation of all plots in one proceeding, if legal.

It is not necessarily illegal or irregular to combine a large number of plots in a proceeding under S. 145, Criminal P. C., where the disupte is between a landlord who claims a large number of plots on one side and different sets of tenants who claim different plots on the other. But when this is done, particular care is required to ensure that the parties are not prejudiced by the amalgamation of a number of plots in one proceeding. (Agarwala, J.) Raja Gope v. Sukan Singh.

AIR 1939 Pat 353 : 20 PLT 145 : 5 BR 894 : 12 RP 120 : 183 IC 286 : 40 Cr LJ 749

——Landlord claiming large number of plots to be in his possession but different sets of tenants claiming different plots separately— One enquiry under S. 145 —Legality —Whether prejudicial — Magistrate should apply his mind to individual holding.

One enquiry under S. 145, Criminal P. C., in a case in which the landlord claims a large number of plots to be in his possession while different sets of tenants claim different plots in their respective possessions separately, is not illegal or necessarily irregular. But when there is such a combination of the claims of different sets of raiyats against one landlord in one enquiry, the question of prejudice will have to be examined. In a case like this, where a body of tenants rightly or wrongly claim a large area of lands as having been settled with them, there is always the danger that from general evidence, conclusion will be drawn in respect of specific lands. It is, therefore, essential for Magistrate to apply his mind to the case of each individual holding. (Mohammad Noor, J.) Gulab Kuer v. Ganouri Koeri.

AIR 1938 Pat 511 (512, 513) : 5 BR 81 : 11 RP 239 : 178 IC 333 : 40 Cr LJ 17.

——Writs for delivery of possession taken out by landlord in execution of rent decrees against various holdings — Dispute and action under S. 145 — Only one proceeding common to all holdings — Landlord alone appearing and filing written statement of his claim — Proceedings, held not proper.

In execution of his rent decrees in respect of various holdings consisting of many plots, the landlord took out writs of delivery of possession. On resistance by the tenants, the Police lodged information with the Magistrate calling for action under S. 145, Criminal P. C. The Magistrate did not draw up one proceeding in

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respect of each holding but a single proceeding covering the whole number of khatas comprising the several holdings dealt with. The proceedings called on the parties in the usual form to attend the Court of the Magistrate in person or by Pleader and to put in written statements of their respective claims. The landlord put in a written statement of his claim but not one of the tenants put in any written statement claiming any part of the disputed land. The Magistrate did not proceed ex parte and hear evidence on the side of the landlord nor did he grant time to the tenants to file their written statements. He went into evidence without first ascertaining which of the tenants were claiming what lands, and he decided the proceedings as if the entire lands in suit had been claimed by the whole body of the tenants jointly:

Held, on revision setting aside the order, that the Magistrate should have dealt with the case of each holding separately and should have given the tenants opportunity of producing evidence to show which of the holdings was claimed by each one. (Rowland, J.) Ram Kishun v. Faujdar Gop.

AIR 1937 Pat 413 : 3 BR 659 : 10 RP 75 : 18 PLT 824 : 170 IC 90 : 38 Cr LJ 842.

——Joint enquiry.

In an enquiry under S. 145, Criminal P. C., when there are separate items in dispute altogether claimed by one person on one side and severally by many persons on the other side, the Magistrate must consider the claims of each and should give a definite finding as to the fact of possession on the date of preliminary order (Burn, J.) Chokalingam Pillai v. Nagalingam Pillai.

1933 MWN 1260.

——Trial of numerous claims held together is not illegal, if the subject-matters are linked together.

Proceedings were initiated between two sets of persons both of whom claimed a large area of somewhat over 300 bighas situated in the domain of the Maharaja of Darbhanga. The first party claimed to be in possession as tenants of the Raj from long past, the second party claimed to have recently been settled on the land by the Raj and to be in possession thereof. The lands were not co-terminous, but they were divided into some 23 different plots. They were not claimed jointly or as a whole by all of the eight parties of the first party, but each party claimed to be in possession of certain of these plots.

Held, there is nothing to prevent a Magistrate from joining numerous claims of this description together and in dealing with the matter at one hearing. The only objection which can really be taken to such a course is, if it can be shown, that the objector is adversely prejudiced by such proceeding, and the fact, that the Magistrate does not in his judgment state which of the first party is

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actually according to his finding, in possession of which part of the porperty in dispute, does not concern the second party at all. (Bucknill, J.) Gajadhar Mull v. Thakur Singh.

AIR 1923 Pat 545 : 85 IC 40 : 1 Pat LR Cr 135 : 26 Cr LJ 424.

——Foundation of jurisdiction—Different plots of land—Different parties interested—Single proceeding — Legality of.

Proceedings under S. 145, Cr. P. Code, are not without jurisdiction because some of the parties are concerned only with possession of a portion of the lands in dispute. To require a magistrate to hold separate proceedings in respect of each plot of land claimed by each of the ryots would be to require him to undertake what would be almost impossible from the intricate character of such proceedings. The jurisdiction of the Magistrate would depend on the nature of the information, on which he has acted. If the dispute so brought to his notice is one likely to cause the breach of the peace, it would be impossible to characterise his proceedings as without jurisdiction, because in the course of the judicial enquiry subsequently held the claim of some of the parties related only to particular plots of land out of the entire area in question. (Newbould and Suhrawardy, JJ.) Sajani Kanta Roy v. Shamsher Ali Sheikh.

AIR 1924 Cal 539 : 71 IC 699 : 24 Cr LJ 235.

——Clubbing together various subjects of dispute —Validity.

Per Davis, J.—Where the dispute is alleged to exist in 230 villages, each village stands on its own footing and the Magistrate will be acting ultra vires, if he clubbed together 230 subjects of dispute, and treated them as one. The legislature does not contemplate wholesale proceedings of this sort, in cases under Ch. XIV of the Code, the object of which is to provide prompt action to avert breaches of the peace. On the question of possession, the Magistrate should decide which party, at the date of his order, was in actual possession of this or that village and confirm that possession, instead of arbitrarily finding that one party was in possession of all the villages. (Davies and Moore, JJ.) Raja of Karvetnagar v. Lodd Govind Doss.

29 M 561 : 16 MLJ 419 : 1 MLT 405 : 5 Cr LJ 91.

57. Subject of dispute—

(d) Moveable property.

——Attachment of — Release.

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Action under S. 145 can be taken only in respect of immovable property. Magistrate has no jurisdiction, in such proceedings to attach movable property. Where it has been done, he has, strictly speaking, no power to order release of the property under S. 145. But he has power under S. 517 to pass orders regarding disposal of property which has come into the custody of police. For such purpose, it is wrong for the Magistrate to rely merely on the police report in holding that the property had been seized from the possession of the particular party. He should give opportunity to both the parties to produce evidence in Court as to the person who was in possession of the property. It ought to be proved by the person who made it and that person should be asked on the subject of possession of the parties. (Chandiramani, J.) Sheo Mangal Singh v. Thakurain Maharaj Kuar.

AIR 1949 All 285 : 1948 AWRHC 257 : 1948 OWN 346 : 50 Cr LJ 473.

57. Subject of dispute—

(e) Undivided share.

——S. 145 (6)—None has right to take exclusive possession of gora deh to detriment of others entitled to use it—Mere fact that land is shamilat does not prevent Court from proceeding.

Where the land is gora deh, no one has a right to take exclusive possession to the detriment of the other persons who were entitled to and apparently were in the habit of using the land and the mere fact that the land is shamilat does not preclude the Court from making enquiry and taking proceedings under S. 145, Criminal P. C. (Currie, J.) Giani v. Emperor.

AIR 1936 Lah 1015 : 38 PLR 332 : 9 RL 334 : 166 IC 71 : 38 Cr LJ 123.

58. Transfer of proceedings.

See Note 33.—Nature of proceedings.

59. Who can take action.

——Second Class Magistrate—Jurisdiction.

A Magistrate who is only a Magistrate of the Second Class, is not competent to entertain an application under S. 145. (Dixit, J.) Ram Charan v. Bakhtawar Singh.

AIR 1953 Madh B 95 : 1953 Cr LJ 641.

——Preliminary order passed by Assistant Commissioner—Powers of First Class Magistrate not conferred at the time of order — Held that the order was without jurisdiction and the Home

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Dept. Notifn. No. 11 dated 15-1-1951 did not give any such power to the Assistant Commissioners. (Teja Singh, C. J.) Birju Singh Dhidma Singh v. State.

AIR 1953 Pepsu 49 : ILR (1952) Patiala 505 : 1953 Cr LJ 592.

——Where an Additional District Magistrate transfers under S. 528, the case under S. 145 to magistrate A and A passes a preliminary order in which he includes some property outside his jurisdiction, it is open to the Additional District Magistrate to withdraw the case from A to his own file, in order to rectify the mistake of transferring the case to A who had no jurisdiction over the subject-matter, and pass another preliminary order. (Govinda Menon, J.) Venkatachalam Chetty v. Ramaswami Chetty.

AIR 1949 Mad 563 : 1949-1 MLJ 646 : 1949 MWN 184 : 61 MLW 848 : 1949 AWR (Sup) 60 : 50 Cr LJ 866.

——Jurisdiction.

An order under S. 145 (1), Criminal P. C., can be made only by a Magistrate having local jurisdiction over the land in dispute. (Hemeon, J.) Bali Ram Nagorao v. Daulat Singh Gulab Singh.

AIR 1945 Nag 56 : 1944 NLJ 538 : ILR (1944) Nag 836 : 220 IC 77 : 46 Cr LJ 654.

——First Class magistrate—Jurisdiction, whether confined to his ilaqa or extends to whole District.

Where a First Class Magistrate has been invested with powers over a whole District, the mere fact that the District Magistrate has, for the sake of convenience, divided the District into ilaqas and a particular ilaqa has been allotted to a First Class Magistrate does not deprive him of jurisdiction to hear a case under S. 145, arising out of another ilaqa of the District. (Broadway, C. J.) Ghulam Hussain v. Sajawal Shah.

AIR 1933 Lah 143 : 34 PLR 365 : Ind Rul (1933) Lah 204 : 142 IC 430.

——The characteristics of a Court of competent jurisdiction are: (i) power to deal with offences or matters of the class in question; and; (ii) power conferred to deal with the offenders or persons of the class in question. (Boys, J.) Madan Mohan Lal v. Sheo Raj Kunwar.

AIR 1932 All 446 : (1932) ALJ 503 : Ind Rul (1933) All 63 : 141 IC 131 : 34 Cr LJ 156.

——The magistrate who has to draw up an order under S. 145 (1) is the magistrate who after drawing up the order proceeds to decide the case.

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(Iqbal Ahmed, J.) Banka Singh v. Gokul.

AIR 1927 All 286 : 99 IC 1031 : 49 All 325 : 25 ALJ 246 : 8 LRA Cr 39 : 7 AI Cr R 267 : 28 Cr LJ 231.

——Although the Sub-Divisional Magistrate has refused to take action under S. 145, District Magistrate can take proceedings under that section on the same materials even though no application is made to him for taking such proceedings. 29 Cal 242, Rel. on. (Duval and Graham, JJ.) Benoy Chandra v. Kala Chand.

AIR 1926 Cal 1049 : 43 CLJ 586 : 97 IC 59 : 27 Cr LJ 1083.

——The District Magistrate may rescind or alter an order made by another Magistrate under S. 144. It is not open to such Magistrate at all to direct the other Magistrate to initiate proceedings under S. 145, Cr. P. C., and a proceeding started in obedience to such a direction is ultra vires. (Bucknill, J.) Chheddilall v. Mahabir Prasad Sukul.

AIR 1921 Pat 445 : 2 PLT 650 : 23 Cr LJ 27.

——Power of Magistrate to decide question of jurisdiction—Revision.

A Magistrate has power to decide whether he has jurisdiction over the land in dispute and where he decides he has no jurisdiction, it is not a failure to exercise his jurisdiction so as to enable the High Court to interfere in revision. (Beachcroft and Ghose, JJ.) Rajani Kanta De v. Debendranath.

AIR 1920 Cal 912 : 61 IC 520 : 22 Cr LJ 392.

60. "Within the local limits of his jurisdiction".

——Transfer of Land in dispute to another State after institution of proceedings—India-Hyderabad (Exchange of Enclaves) Order (1950), S. 7.

It is necessary for the Magistrate to continue to have territorial jurisdiction over the land in dispute until the final disposal of the proceedings under S. 145.

Where after the institution of the proceedings the village in which the land in dispute is situate and which was originally in Hyderabad State is transferred to the State of Bombay in pursuance of the India-Hyderabad (Exchange of Enclaves) Order, 1950, the Magistrate ceases to have jurisdiction and it is the Bombay Court having territorial jurisdiction over the land that should hear the case. Hence the order of the Magistrate passed after the coming into force of the India-Hyderabad (Exchange of Enclaves) Order

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is without jurisdiction. (Suryanarayana Rao, J.) Eknath v. Jivraj.

AIR 1951 Hyd 122 : ILR (1951) Hyd 598 : 52 Cr LJ 1358.

——Proceedings transferred by Additional District Magistrate under S. 528 to Magistrate A—A passing preliminary order under S. 145 (1) on 17-7 1948—Some property found outside A's jurisdiction —Additional District Magistrate withdrawing case to his own file and passing preliminary order on 21-7-1948—Held (1) that it was not illegal to rectify mistake made in sending case to A having no jurisdiction over some properties; (2) that order of 21-7-1948 should be construed as affecting that portion of property over which A had no jurisdiction; (3) that order of 21-7-1948 was valid from 21-7-1948 in respect of properties over which A had no jurisdiction and from 17-7-1948 over which A had jurisdiction. (Govinda Menon J.) Venkatachalam Chetty v. Ramaswami Chetty.

AIR 1949 Mad 563 : 61 MLW 848 : 1949 MWN 184 : 1949-1 MLJ 646 : 1949 AWR Sup 49 & 60 : 50 CrLJ 866.

——Ss. 145, 12—Headquarters Magistrate—Local jurisdiction.

An order under S. 145 (1) can only be made by Magistrate having local jurisdiction over the land in dispute. Unless the powers of a Magistrate have been restricted to a defined local area, he has jurisdiction in the entire district. The Headquarters Magistrate can therefore, try a case under S. 145 in respect of any local area in the district unless it is shown that his jurisdiction has been restricted. (Hemeon, J.) Bali Ram Nagorao v. Daulat Singh Gulab Singh.

AIR 1945 Nag 56 : 1944 NLJ 508 : ILR (1944) Nag 836 : 220 IC 77 : 46 Cr LJ 654.

——Where the District Magistrate transferred a case under S. 145 to another Magistrate in another Sub-Division and the Magistrate to whom it was transferred included in the proceedings before him certain land outside his sub-division: Held that he had jurisdiction to do so. (Dhavle, J.) Rameshwar Pathak v. Baijnath Rai.

AIR 1935 Pat 436 : 37 Cr LJ 55.

——The Magistrate cannot take proceedings under the section when land in dispute is not within his jurisdiction.

Application was made to the District Magistrate praying for action to be taken under S. 145. The District Magistrate took the petition on file and without himself taking action under S. 145 (1) transferred it to Sub-Divisional Magistrate under him for disposal. The Sub-Divisional Magistrate made an order under S. 145 (1). But the land concerned was not within the local limits of his jurisdiction.

Held, that the District Magistrate was wrong in transferring the case to a Sub-Divisional Magistrate who had no jurisdiction over the land concerned. The District Magistrate had no

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power to alter the boundaries of any sub-division of his District permanently, temporarily, or for the purpose of any particular case. The Sub-Divisional Magistrate's order therefore was without jurisdiction. 26 Mad 188 and 22 Cal 898, Dist.; 41 Mad 246, Appr. (Reilly, J.) Chellapathi Naidu v. Subba Naidu.

AIR 1928 Mad 1230 : 28 MLW 664 : 52 Mad 241 : 114 IC 625 : 1928 MWN 921 : 1 M Cr C 320 : 55 MLJ 693 : 30 Cr LJ 340.

——Forum—Jurisdiction—Dispute as to land between two channels—Boundary—Province of Agra and Oudh.

A dispute occurred regarding a plot of land situated between the two distinct channels of a stream forming the boundary between two districts held, that the Magistrate of the District where the stream flowed had jurisdiction to take cognizance. (Piggot, J.) Audhendra Pratap Singh v. Daman Singh.

AIR 1915 All 137 : 29 IC 543 : 16 Cr LJ 527.

—Jurisdiction—Dispute as to local area in which land is situate.

In proceedings under chap. 12 where there is any doubt as to the exact local area within which the land in dispute is situate inquiry can be made by a Magistrate having jurisdiction in either of the areas in which the land may be situate. (Evans, A. J. C.) Iklas Kunwar v. Raghuraj Bahadur Singh.

4 Ind Cas 876 : 12 OC 400 : 11 Cr LJ 69.

——Proceedings initiated by District Magistrate—Transfer by him, to first class Magistrate, subordinate to him—Local jurisdiction of such Magistrate throughout the District—Sec. 12 (2)—Jurisdiction to add parties and issue fresh copies of proceedings.

The jurisdiction to make a final order under S. 145, Cr. P. C. is not personal to the Magistrate who initiates the proceedings, and a District Magistrate who has initiated the proceedings, may of his own motion transfer the case under Ch. XII to a Magistrate of the first class subordinate to him.

A Magistrate of the first class though holding his Court at the head quarters, has local jurisdiction throughout the district. Such a Magistarate has therefore jurisdiction, personal as well as local to try the case under chap. XII upon transfer to him by the District Magistrate.

He has jurisdiction, when the case is transferred to him, to add parties and issue fresh copies of the original proceedings. (Mitra and Holmwood JJ.) Ram Kissore Roy v. Dwarka Nath Sen.

10 CWN 1095 : 4 Cr LJ 223

——Jalkar—Part outside local limits of jurisdiction. Where a jalkar, the subject of a proceeding under s. 145, is situate partly within and partly without the local limits of a Magistrate's jurisdiction, the order of the Magistrate with regard to that portion which lies outside it, is ultra vires. S. 145 gives jurisdiction to the Magistrate in res-

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pect of land or water or boundaries thereof lying within the local limits of his jurisdiction. If the proceedings have been taken with regard to the jalkar as a whole, the entire order should be set aside. (Greidt and Mookerjee, JJ.) Korban Molla v. Raja Srinath Roy.

1 CLJ 329 : 2 Cr LJ 406.

61. Written statement.

——Magistrate's decision under S. 145 will not be binding on the parties whose written statement Magistrate had refused to admit as it tends by defeat the object of the section.

The very object of the proceeding under S. 145 of the Code is to put an end to disputes as to possession of immovable properties so as to prevent a breach of the peace. This object cannot be gained until all the contending parties are on the record and an opportunity is given to them to put forward their respective claims. The effect of an order rejecting the written statement of certain parties is that his decision under S. 145 will not be binding upon them. (Jwala Prasad, J.) Raghunath Kuer v. Rajkishore Kuer.

AIR 1924 Pat 783 : 81 IC 442 : 5 PLT 458 : 25 Cr LJ 906.

——Non-filing of written statement does not take away jurisdiction of Magistrate to try case.

In order to give jurisdiction to a Magistrate to proceed under S. 145 all that is necessary is that he should be satisfied of there being likelihood of a breach and he should make a note stating his grounds of his so being satisfied and require the parties to attend and to put in written statements of their claims. If a party fails to put in written statement, that would not take away the jurisdiction of the Magistrate to proceed with the case; 11 WR Cr Rulings, p. 9 Ref. (Kulwant Sahay, J.) Ramjaria v. Piar Koeri.

AIR 1923 Pat 369 : 73 IC 173 : 4 PLT 308 : 2 Pat LR Cr 6 : 24 Cr LJ 557.

——S. 146.

SYNOPSIS

1. **Scope of the section.**
2. **Inquiry into possession.**
3. **None in such possession.**
4. **Parties.**
5. **"Unable to satisfy".**
6. **Evidence equally balanced.**
7. **Magistrate to take evidence.**

See also under S. 145.

8. **Joint and separate possession.**
9. **Decision of competent Court.**
10. **Order of attachment.**
11. **Cost.**
12. **Effect of attachment.**
13. **Withdrawal of attachment.**
14. **Appointment of Receiver.**
15. **Settlement by or with Receiver—Effect.**
16. **Review.**
17. **Revision.**

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1. Scope of the section.

——Procedure prescribed by S. 145 (4) must first be exhausted before taking action under S. 146—See ibid, S. 145 (4).

AIR 1953 All 505 : 1953 Cr LJ 1169.

——Attachment in case of joint possession.

Section 146 comes into operation only when a proceeding under S. 145, Cr P. C., is justified.

Courts generally do not favour the view that any order under S. 145 should be passed to restore any of the joint possessors to the possession of the disputed property in preference to the other and an order of attachment under S. 146, being more or less an offshoot of a proceeding under S. 145, it is not generally favoured that the property should be placed or continued under attachment and keep the dispute alive. AIR 1915 Mad 396, Rel. on. Case law discussed.

Where in a proceeding under S. 145 relating to a brick field the Magistrate came to the conclusion on the evidence that both the parties to the dispute were in joint possession and thereupon passed an order of attachment under S. 146 (1).

Held that the proceedings under S. 145 should be dropped and the order of attachment set aside. (H. Deka, J.) Bhog Chandra v. Sitaram Singh.

ILR (1953) 5 Assam 348.

——S. 143 (1)—Scope of the inquiry—See Criminal P. C. (1898), S. 145 (4), (5) and (6).

1953 Ker LT 862.

——S. 146 does not apply to proceedings under S. 147 in which there is no conflict regarding the question of possession. In proceedings under S. 147, therefore, the Magistrate has no jurisdiction to attach the property in dispute and appoint a receiver—See ibid, S. 147.

ILR (1948) 1 Cal 374.

——An order under S. 146, Criminal P. C., attaching property is a desperate remedy for cases in which Magistrate finds it quite impossible to choose between conflicting evidence adduced by parties. (Rowland J.) Nand Kishore v. Bigan Lohar.

AIR 1940 Pat 113 : 21 PLT 306 : 6 BR 81 : 12 RP 281 : 184 IC 817 : 41 Cr LJ 101.

——Ss. 146, 145—Object.

In order to pass an order under S. 146, Criminal P. C., it is necessary for the Magistrate to have come to some finding of his own on the evidence of the parties that he was unable to satisfy as to which of the parties was in possession of the subject of dispute. Section 146 pre-supposes an enquiry by the Magistrate on the evidence recorded and the object of S. 146 is to give the Magistrate jurisdiction to attach the property, if upon the evidence so recorded, he is unable to come to finding as to who was in possession on the date on which the order under S. 145 was drawn up, and where there is no evidence of any kind on record, the order attaching property is without jurisdiction. A Magistrate cannot say that he is unable to satisfy himself if he has never made the slightest efforts to do so. When the Magis-

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trate has not made any effort to satisfy himself, the order cannot be supported under S. 146.

Section 146 is only a continuation of the proceedings under S. 145, Criminal P. C. (Ganganath J.) Radha Raman v. Emperor,

A I R 1936 All 177=8 R A 558=(1936) A L J 197 = 1936 A W R (C C) 125=160 I C 20=37 Cr L J 215.

——Attachment can be made only in cases where the property is not in possession of the contesting parties or if the Magistrate cannot determine who is in possession. (Burn, J.) Errappa Reddi v. Guruswami Reddi,

1935 M W N 367.

——Difference between Ss. 145 and 146.

Provisions of S. 146 differ from those of S. 145 (6). What the plaintiff has to show to the Court when he comes to it after attachment under S. 146 is that he has rights in the lands attached and he is entitled to possession. Provisions of S. 146 differ from those of S. 145 (6). Section 145 (6) provides that the Magistrate shall issue an order declaring a party to be entitled to possession of the subject-matter in dispute until evicted therefrom in due course of law in case he decides that the party was in possession or should, under the first proviso to subsection (4), be treated as being in possession of the subject-matter in dispute. (Jwala Prasad, Ag. C. J. and Kulwant Sahay, J.) Hargobind Ray v. Keshwa Prasad,

A I R 1925 Pat 168=84 I C 386 = 1924 P H C C 297 =6 P L T 465.

——Order under—Proceedings under S. 145 necessary.

There must be a proceeding under section 145 before an order under section 146 can be passed. (Kotval, A. J. C.) Nilkanth v. Suryabhan,

A I R 1923 Nag 297=75 I C 80=24 Cr L J 880.

——Attachment — Proceedings not actually drawn up—Order is ultra vires.

A Magistrate has no jurisdiction to direct the attachment of the disputed lands and to settle them with any person for the purpose of cultivation when no proceedings under S. 145 had actually been drawn up. (Das, J.) Jamna Prasad v. Mohan Koeri,

A I R 1921 Pat 353=2 Pat L T 724=64 I C 848=23 Cr L J 64.

——Condition for order under.

Where, from the record, it appears that the procedure prescribed by S. 145 was not followed by a Magistrate, no order in writing, as required by that section, having been made by him, the Magistrate's order attaching the property is an order without jurisdiction and one which cannot be deemed to have been passed under Ch. XII, Criminal P. C., as there was nothing to indicate that there was a dispute likely to cause a breach of the peace. (Aikman, J.) Aziz-ud-din v. Emperor,

2 A L J 149=27 All 294=2 Cr L J 102.

2. Inquiry into possession.

——Ss. 146 and 145 — Inquiry into possession under S. 145 should precede action under S. 146 — Attachment without inquiry—Miscarriage of justice.

No order under S. 146 could be passed without an enquiry into the fact of actual possession as required by the provisions of S. 145. An order attaching the property without enquiry is not only opposed to the provisions contained in Ss. 145 and 146, Cr. P. C., but it is opposed to the provisions of natural justice. It also involves denial of justice. Therefore, where the Magistrate drops the proceedings under S. 145 abruptly on the ground that the case has been a long pending one and without any enquiry into the fact of possession keeps the property under attachment stating that the parties could seek redress in civil Court, an obvious miscarriage of justice results.

CRIMINAL P. C. (V of 1898), S. 146—2. Inquiry into possession

(Ram Labhaya J.) Keshab Chandra Bhagabati v. Gopal Chandra Goswami,

1 L R (1953) 5 Assam 409.

——Magistrate finding that there is apprehension of breach of peace—His duty is to enquire into possession and pass orders either under S. 145 or S. 146. (Bennett, J.) Mt. Raquma v. Mt. Ghirai,

AIR 1940 Oudh 22=12 R O 142=1939 O W N (C C), 974=1939 A W R (C C) 277=184 I C 751 = 41 Cr L J 96 (2).

——Power to attach property, when to be exercised—Necessity of reasonable doubt.

Section 146, Criminal P. C., comes into operation only if the Magistrate is unable to satisfy himself as to which of the parties is in possession. It is not necessary that the order of the Magistrate should be so convincing as to make a Revisional Court equally sure that one party is in possession rather than the other. (Pullan J.) Brij Pal Singh v. Ram Naresh Singh,

AIR 1952 All 325 = Ind Rul (1932) All 70=135 I C 246=33 Cr L J 157.

——Decision as to possession necessary prior to attachment.

It is not a Magistrate's business to speculate whether his order under S. 145 will prejudice a future decision, perhaps several years hence, in a revenue proceeding. It is also not sound to check his hand because his decision is not final. Although it is true that an attachment under S. 146 will as effectually prevent a breach of the peace as a decision in favour of a party or under S. 145, a reasonable effort, varying of course with the circumstances of each particular case, must be made to decide as to possession before there is jurisdiction to attach the subject-matter under S. 145, 40 C. 105, Ref. (Macpherson J.) Wayesul Huq v. Shobrati Jolaha,

AIR 1924 Pat 47=74 I C 258=4 P L T 441 = 1 Pat L R Cr 161=24 Cr L J 754.

——Inquiry is necessary.

Before attaching the property, a Magistrate must make some enquiry in order to ascertain, if possible, who was in possession. (Ross J.) Parsuram Rai v. Shivajatan Upadhaya,

AIR 1922 Pat 544=3 Pat L T 434 = 66 I C 421=23 Cr L J 277.

——Order ex parte—Irregularity.

A Magistrate has no jurisdiction to pass an order under S. 146 behind the back of the parties or ex parte. The proper course is to pass orders in the presence of both the parties. (Jwala Prasad J.) Lachmi Singh v. Bhusi Singh,

AIR 1917 Pat 110=43 I C 817=19 Cr L J 225.

——Ss. 145 and 146—Attachment — Subsequent application by third party to reopen proceedings—Procedure.

Where on institution of proceedings under S. 145, the Magistrate, being unable to satisfy himself as to which of the two partners was in possession, attached it under S. 146 and subsequently the petitioner a third party appeared and pointed out that the land in dispute belonged to his ward, a minor, and applied to be allowed to prove his ward's possession, but the Magistrate declined to accede to his application. Held that the course adopted by the Magistrate was bad and that he ought to have given the petitioner an opportunity to make out his case for the protection of his rights. (Atkinson J.) Clair Smith v. Ahmed Hussain.

AIR 1917 Pat 661=1 Pat L W 373=39 I C 1005=18 Cr L J 637.

——Ss. 145 and 146—Attachment of property.

CRIMINAL P. C. (V of 1898), S. 146—2. Inquiry into possession

A Magistrate cannot issue an order for attachment of property unless and until there is an inquiry under S. 145, that is after he has received and considered the evidence produced before him by the parties. (Lindsay J. C.) Inayat Ullah v. Amanat Husain,

AIR 1914 Oudh 31=1 O L J 242=24 I C 350=15 Cr L J 470.

——Jurisdiction to pass order of attachment, without written statement and evidence.

It is not beyond the jurisdiction of a Magistrate to make an order under S. 146, Criminal P. C., without written statements and without evidence. But he should make attempts to have the written statements and evidence and then investigate that question in the light of evidence and of written statements. He acts without jurisdiction where he passes the order without making any such attempt at all. (Stephen and Carnduff JJ.) Asfandyar Khan v. Irshad Khan,

5 Ind Cas 249=11 Cr L J 90.

——Attachment without holding inquiry—An order of attachment of property in dispute without making any inquiry as to the rights of the parties, pending the decision of a competent Court of civil jurisdiction is erroneous and must be set aside. (A Lucas and H. N. Crouch J. Cs.) Crown v. Isa Khan,

1 S L R 33 Cr=9 Cr L J 272.

——Ss. 145, 146 and 148 — Attachment under S. 146—Validity.

In a proceeding under S. 145, the parties appeared on the day of hearing but did not file any written statements, or produce any evidence. The Magistrate thereupon heard the parties and, being unable to satisfy himself as to which of them was in possession, attached the subject of dispute under S. 146. Held that the Magistrate ought to have granted time to allow regular proceedings to be followed or he might have informed himself of the facts of the case either by local inquiry under S. 148, or otherwise. As he did not do so, he had declined jurisdiction and his order under S. 146 ought to be set aside. (Stephen and Holmwood JJ.) Sheikh Mansar Ali v. Matiullah,

12 C W N 896=8 Cr L J 202.

——Question of rightful possession.

For purposes of Ss. 145 and 146, Magistrate is neither called upon nor empowered to consider the question of rightful possession. It should decide the question of actual possession. (Batty and Aston JJ.) In re Sanganbasawakom Basappa,

7 Bom L R 18=2 Cr L J 28.

3. None in such possession.

——S. 146 (1)—Finding that party in possession had come into possession forcibly — No finding that opposite party had been dispossessed — Proviso to S. 145 (4) does not apply — Possession should be delivered to person in possession—Order under S. 146 (1) cannot be passed : See ibid, S. 145 (4).

AIR 1949 All 97=49 Cr L J 751.

——Remedy under is desperate.

Order of attachment under S. 146 is a desperate remedy for cases in which the Magistrate finds it quite impossible to choose between the conflicting evidence adduced by the two sides. If the Magistrate thinks that the evidence for one party, weak though it may be, was preferable to the evidence for the other party, it would be the Magistrate's duty to give a decision in favour of the former: AIR 1940 Pat 113, Foll. (Varma C. J.) Dhalaram v. State,

1946 J L R 486.

——Possession is the chief thing to be seen and if the property definitely be in possession of one party, a Court

CRIMINAL P. C. (V of 1898), S. 146 — 3. None in such possession

cannot pass an order for its attachment. (Burn J.) V. Suryanarayana v. Velamati Brahman,

1935 M W N 368.

——Joint Hindu family disputes—Order not proper.

A Magistrate took proceedings under S. 145 in respect of a dispute between three Hindu brothers and with regard to property which was formerly joint family property. The question in dispute was whether the three brothers were jointly entitled to the property in dispute or there had been partition in virtue of which the property in dispute had fallen to the share of the eldest brother who was in possession. The Magistrate could not make up his mind on the question and as he would not satisfy himself as to which of the parties was in exclusive possession of the land in dispute, he applied S. 146 and attached the land until the rights of the parties thereto were determined by a competent Court.

Held, that although it could not be said that the Magistrate's order under S. 146 was not competent it was an order which ought not to have been made under the circumstances of the case. It was clear that whether there had been partition or not the eldest brother was entitled to be in possession. If the alleged partition really took place then he was entitled to be in possession in his own right. If it did not take place he was entitled to be in possession as the eldest brother and the manager of the family. The order of attachment, therefore, was not reasonable and if there was any danger to the breach of the peace, proper order would have been to take proceedings under S. 107 and bind the parties for such term as was necessary. A.I.R. 1926 Bom. 313, Ref. (Mirza and Broomfield JJ.) In re Venkatraman Rama Hedge.

AIR 1930 Bom 172=1930 Cr C 548=125 I C 718=32 Bom L R 340=31 Cr L J 933.

——One party found to be in possession—No attachment can be made.

Where the first party, a widow and her mortgagee are found to be in possession of the disputed garden and the second party is not found to be in possession, a Magistrate is not entitled to attach the subject of dispute merely on the ground that the widow had, in her written statement, stated that she was not in possession but the mortgagee was, because the possession which she had may be exercised through her mortgagee. (Ross J.) Mt. Mahodra Koer v. Khuhan Panday

AIR 1923 Pat 363.

——Ss. 145 and 146—Immoveable property—Public pathway—Neither party in possession.

Where the land in dispute is a public pathway and neither party is in possession the Magistrate has no jurisdiction to attach the land under S. 146 of the Code. (Beachcroft and Ghose JJ.) Sasi Mohun Kundu v. Kailash Chandra De

AIR 1920 Cal 898=61 I C 848=22 Cr L J 464.

——Where in a dispute as to lac between tenants and zamindars it was manifestly impossible to restore the physical condition of things as they existed when the proceedings under S. 145 were instituted and where the title was in dispute and the Court was not in a position to make an assumption as to possession in favour of either party.

Held, that in such circumstances, the best course to adopt was to keep the property in the custody of the Court pending decision by a Civil Court on the question of title. 1 M. L. W. 1032 ; Hood' Barrs v. Heriot, (1896) A. C. 174 and Peruvian Guano Co. v. Dreyfus Bros., (1892) A. C. 166, Ref. (Mookerjee Ag. C. J. Fletcher, Chatterjee, Richardson and Ghose JJ.) Pigot v. Ali Muhammad Mandal

AIR 1921 Cal 30=48 Cal 522=22 Cr L J 213 (SB).

CRIMINAL P. C. (V of 1898), S. 146 — 3. None in such possession

——Ss. 145 and 146—Attachment—Third party in possession—Procedure.

Where in a proceeding under S. 145 of the Criminal P. C., the Magistrate finds neither the first party nor the second is in possession but finds actual possession is with a person who does not claim to be in possession, he should proceed to attach the property under S. 146 of the Code. (Jwala Prasad J.) Mussamat Bhagjogin v. Emperor

AIR 1919 Pat 130=49 I C 775=20 Cr L J 215.

4. Parties.

——Meaning — Disposal of property — Jurisdiction of Magistrate.

'Parties' in S. 146, Criminal P. C., means parties concerned in the dispute relating to land or water; a Magistrate has no jurisdiction to order the disposal of property in favour of persons not concerned at all in the dispute. (Shah Din J.) Mohar Singh v. Emperor

123 P L R 1911=18 P W R (Cr.) 1911=11 I C 587=12 Cr L J 403.

5. "Unable to satisfy."

——"Unable to satisfy himself as to which of them was then in possession."

In proceedings under S. 145, Criminal P. C., the Magistrate should first make every attempt to come to a conclusion on the merits of the case with a view to ascertain which of the contesting parties is actually in possession. It is only when he finds the evidence equally balanced, and is unable to make up his mind, that he is absolved of the responsibility of coming to a definite conclusion in the matter. The order itself need not be long, but, it should contain sufficient material to indicate to the revisional Court that the Court of enquiry had applied its mind to the case, and had made a genuine attempt to give a decision, in the matter, and, in spite of it, had found itself unable to come to any definite conclusion in favour of either party, and hence it was taking action under S. 146. (Beg J.) Ayodhya Nath v. Ganga Prasad

AIR 1953 All 751 = 1953 All W R (H C) 332= 1953 All L J 418=1953 Cr L J 1717.

——Applicability.

Section 146 applies only when the Magistrate is unable, on a judicial consideration on the evidence on record, to decide the question of possession. (Sharma J.) Sher Khan v. Sagar

1953 Raj L W 115.

——"Unable to satisfy himself as to which of them was then in such possession."

In case under S. 145, a Magistrate should be extremely reluctant to attach the property in dispute and if he has done so the attachment should be terminated as soon as considerations of safety might allow its withdrawal. But where the land is cultivated from year to year and season to season it would normally be possible for the Magistrate, either on the evidence on the record or on admission of further evidence, to ascertain as to which party was in possession at the relevant date, instead of admitting his weakness and relegating the parties to the civil Court. The information which the parties gave may be true or may be false but it is his duty to sift it and not to take the easy way by having recourse to S. 146. (Misra J.) Parmesnwar Din v. Sheo Moorat

AIR 1952 All 918=1952 All W R (H C) 192 = 1952 All L J 266=1952 R D (H C) 211= 1952 All Cr R 63= 1952 Cr L J 1650

——Fact of actual possession must be decided - Magistrate unable to come to any finding — Procedure — See ibid, S. 145.

AIR 1952 Pat 233 = 1952 All W R (Sup) 55 = 1952 Cr L J 703.

CRIMINAL P. C. (V of 1898), S. 146— 5. "Unable to satisfy"

——Order, when can be passed.

Order under S. 146 is to be passed only in the absence of an order of a competent Court. But in case such an order has been actually passed which is binding on the parties to the proceedings, the question as to whether possession was actually delivered to the successful party as a result of the order is not material. (Kuppuswami Ayyar J.) Chinnamma Naicken v. Rama Naicken

AIR 1944 Mad 472=17 R M 186= (1944) 2 M L J 41 =1944 M W N 449 (2)=216 I C 9=46 Cr L J 104.

——S. 146 (1) — Decree-holder obtaining symbolical possession in execution of decree upon delivery warrant — Judgment debtor attempting forcible entry within two months— Application under S. 145 by decree-holder — Magistrate by order under S. 146 (1) referring back parties to Civil Court—Such order, held highly improper and opposed to all principles of justice. (Mya Bu J.) Kan Maung v. Maung Po Tok

AIR 1939 Rang 388 = 1940 Rang L R 157 = 15 R Rang 183=185 I C 119=41 Cr L J 123.

——Inability of Magistrate to find which party was in possession is necessary to invoke applicability. (Pollock J.) Miya Khan v. Muhammad Hanif

1939 N L J 213.

——For a Magistrate to attach property in dispute under S. 146, all that S. 146 requires is that the Magistrate should be unable to satisfy himself as to which of the parties was in "such possession," that is, actual possession of the subject in dispute. (Mirza and Broomfield JJ.) In re Venkatraman Rama Hedge

AIR 1930 Bom 172=1930 Cr C 548=125 I C 718=32 Bom L R 340=31 Cr L J 933.

——Doubtful possession.

Where the Magistrate is unable to satisfy himself as to which of the parties is then in possession he cannot attach the subject of dispute under S. 146. (Sundaram Chetty J.) Parandhamayya v. Virayya

1930 M W N 771.

——Inability to decide possession or that neither had it.

Where there was a dispute between the parties regarding the land in suit and the proceedings under Ch. XII of the Criminal P. C., the Magistrate attached the land under S. 146 and appointed a Receiver thereof referring the parties to the Civil Court for the determination of their rights, and where a suit was brought by the plaintiff for a declaration that he was the owner of the land.

Held, that where it is not known whether it was the plaintiff or the defendant who was guilty of interference with possession or dispossession, all that one can say as to what led the Magistrate to take possession is that it was either his inability to decide who was in actual possession or his decision that neither party was in possession and that neither of these can be said to be a wrong by the defendant. (Kotval A. J. C.) Yeknath v. Bahia

AIR 1925 Nag 236=85 I C 651=20 N L R 195.

——Duty of Magistrates.

It should be held as a very important principle in cases under S. 145 that a Magistrate should be extremely reluctant to attach the property in dispute. It is quite intelligible that he might be in a position to say with confidence that he was unable to satisfy himself as to the possession of the parties in cases where the land is jungle or waste. But where there is land admittedly subject year by year and season by season to cultivation, the Magistrate will be only admitting his own weakness if he states that he cannot come to a decision. He has before him two parties quite ready with information. The information may be true or false but it is his duty to collect information and sift it. After all the order under S. 146

CRIMINAL P. C. (V of 1898), S. 146 — 5. "Unable to satisfy"

is almost the same as an act of confiscation and therefore the Magistrate should naturally be reluctant to make use of that section. (Foster J.) Ram Bahal Singh v. Rang Bahadur

AIR 1924 Pat 804=82 I C 367= 5 P L T 589=25 Cr L J 1295.

——Order of attachment without trying to give a final decision is not sound.

It is not a Magistrate's business to speculate whether his order under S. 145 will prejudice a future decision, perhaps several years hence, in a revenue proceeding. It is also not sound to check his hand because his decision is not final. Although it is true that an attachment under S. 146 will as effectually prevent a breach of the peace as a decision in favour of a party under S. 145 a reasonable effort, varying of course with the circumstance of each particular case, must be made to decide as to possession before there is jurisdiction to attach the subject-matter under S. 146 : 10 C. 105, Ref. (Macpherson J.). Wayesal Huq v. Shobrate Jolaha

AIR 1924 Pat 47=4 Pat L T 441=74 I C 258=1 Pat L R Cr 161=24 Cr L J 754.

——Order under — When to be passed — Contents of — Revision.

A Magistrate can pass an order under S. 146 of the Code only when he is unable, on a consideration of the evidence to come to a definite finding as to the possession of either party and he must give reasons for such inability. If not the order is without jurisdiction and liable to be set aside in revision. (Jwala Prasad J.) Khedan Mahto v. Hussaini Kalal

AIR 1921 Pat 165=(1921) Pat H C C 112= 61 I C 51 =2 P L T 16=22 Cr L J 323.

——Fishery—Large area — Attachment — Local investigation.

A Magistrate who attaches the property in dispute without a local investigation does not commit an error in procedure. Where a Magistrate attached the property in dispute under S. 146 on a finding arrived at by him to the effect that it was very difficult to come to a decision about the possession of the whole jalkar in dispute from the evidence adduced. Held, that the judgment of the Magistrate must be read as meaning that on the evidence adduced, he was unable to satisfy himself as to which of the contending parties was in possession of the property in question. (Teunon and Cuming JJ.) Upendra Nath Bhattacharjee v. Prasanna Kumar Ghosh,

AIR 1919 Cal 884=48 I C 497=20 Cr L J 17.

——When to be applied—Order made in disregard of decision under S. 41, Survey Act (V. B C. of 1875) — Rejection of material evidence on erroneous grounds — Order was without jurisdiction or involved gross material irregularity.

An order under S. 145 can be made only when the Magistrate is unable to satisfy himself as to which of the contending parties is in possession; the trying Magistrate should have presumed possession in favour of the party who succeeded under S. 41 of the Bengal Survey Act which had the force of an order of the Civil Court. The Magistrate having discarded and rejected on erroneous grounds, practically every piece of evidence that might have led him to a correct conclusion made his final order; it is therefore without jurisdiction or passed with such gross and material irregularities as seriously to prejudice the second party. (Teunon and Smither JJ.) Prafulla Nath Tagore v. Hodding,

A I R 1918 Cal 284=21 C W N 1059=26 C L J 39=42 I C 604=18 Cr L J 988.

CRIMINAL P. C. (V of 1898) S. 146 — 5. "Unable to satisfy"

——Ss. 145 and 146—Attachment — Order under S. 146 proper when peaceful possession cannot be determined.

A Magistrate should pass an order only under S. 146 if he finds that no party was in peaceful possession of land in dispute, e. g., where the land is under water within 2 months before the date of the proceedings under S. 145. (Chitty and Walmsley JJ.) Satyendra Nath v. Krishna Dhan Adikari,

A I R 1917 Cal 82=20 C W N 1014=37 I C 64=18 Cr L J 80.

——Order of attachment, when proper.

An order under S. 146 is ultra vires unless the Magistrate records a finding that he is unable to find which party is in actual possession under S. 145. (Spencer and Seshagiri Aiyer JJ.) Thumbalabed Hampanna v. Parisee Gangamma,

AIR 1915 Mad 1176=27 I C 911=16 Cr L J 239.

——Enquiry as to possession — Conflicting claims on different titles—Duty of Magistrate.

Where the parties put in conflicting claims based on different titles in an enquiry as to possession the Magistrate cannot, holding that the dispute was one which related to succession and that he was unable to decide as to the question of possession, order the property to remain under Court attachment till the parties had settled their differences in a Civil Court. (Arnold White C. J.) Veyya Manikiayam v. Venkaiya,

8 Ind Cas 63=8 M L T 447=11 Cr L J 560.

——Ss. 145 and 146 — Failure to file written statement and adduce evidence even after long delay — Jurisdiction to attach under S. 146.

The Magistrate did not act without jurisdiction in refusing to grant time for the filing of written statements and in attaching the disputed land under S. 146, Criminal Procedure Code, where the parties failed to file their written statements or to adduce evidence though by then more than two months had gone from the date on which the proceedings were drawn up. (Casperz and Ryves JJ.) Bejoy Madhub Chowdhury v. Chandra Nath Chuckerbutty,

14 C W N 80=5 Ind Cas 40=11 Cr L J 27.

——Attachment when entered.

The powers given by S. 146, would justify attachment only on the Magistrate's inability to satisfy himself as to which of the parties was in possession of the subject of dispute. Attachment will not be justified merely because the Magistrate could not decide upon the rights of the parties. (Batty and Aston JJ.) In re Sanganbaswa kom Basappa,

7 Bom L R 18=2 Cr L J 28.

——Power to attach property—Exercise of.

A Magistrate cannot take action under S. 146 merely because he is unable to satisfy himself as to which of the parties is entitled to possession or has a right to the property. Inability to decide on the right to the property cannot, therefore, justify the attachment of the property under that section. (Batty and Aston JJ.) In re Somnath Madhavji,

6 Bom L R 723=1 Cr L J 832.

6. Evidence equally balanced.

——"Unable to satisfy himself as to which of them was then in such possession."

It is necessary for the Magistrate to decide the question of actual possession after judicially balancing the evidence produced by either party. Where far from showing that the evidence of the two parties was judicially balanced, the judgment of the Magistrate shows that he did not at all make a serious effort to appreciate the evidence pro-

CRIMINAL P. C. (V of 1898), S. 146 — 6. Evidence equally balanced

duced by the parties, his judgment cannot be maintained. A. I. R. 1940 Pat 113, Rel. on. (Sharma J.) Hanuman v. The State,

1953 Raj L W 210.

——Inquiry into possession—Evidence as to possession of both sides evenly balanced—Magistrate's finding that evidence was not enough for a positive finding of possession in favour of one party or other — Order of attachment under S. 146 is justified and High Court will not interfere in revision. (Thadani C. J. and Ram Labhaya J.) Madan Chandra v. Mukeswar Phukan,

A I R 1951 Assam 89=I L R (1950) 2 Assam 419=52 Cr L J 695.

——Evidence of possession on both sides equally unreliable — Order under S. 145 based on presumption of possession arising from the title, if valid—Such presumption when applicable—Interference by High Court—Magistrate directed to act under S. 146.

Where in a proceeding under S. 145, Cr. P. C., a Magistrate found that the evidence of possession on both sides was equally unreliable, but declared the second party to be in possession relying on the presumption as to possession arising from title ;

Held, that the order of the Magistrate under S. 145 was bad and he was directed to act under S. 146, Cr. P. C.

Where a Magistrate finds the evidence on both sides, which in itself is reliable, equally balanced, and he is unable to conclude from such evidence which party is in possession then he is entitled to corroborate the evidence of possession given by one side by the presumption as to possession arising from the title which he finds in that side. But this principle does not apply in a case where the Magistrate finds that the evidence of possession on both sides is equally unreliable. (Sanderson C. J. and Chotzner JJ.) Ashoy Kumar Bhattacharjee v. Brojeswar Ghattak,

A I R 1923 Cal 303=26 C W N 1000=71 I C 365=24 Cr L J 141.

7. Magistrate to take evidence.

—See also under S. 145.

——Where the Magistrate had not discussed the evidence produced by the parties nor had he given any reason why he could not come to a definite conclusion on that evidence, the order of attachment was bad. (Ziaul Hasan J.) Munir Ahmad v. Mahmud-ul-Haq,

1938 O W N (C C) 673=1938 A W R (C C) 134.

——No evidence adduced.

There is no obligation imposed by S. 146 on the Magistrate to make independent enquiry if the parties having been given adequate opportunities decline to adduce evidence as to possession. He is entitled to act on his apprehension of breach of peace founded on information he may have before him and in the absence of material which would enable him to protect the possession of one or the other of the parties he must attach the property. 14 C W N 80 and A I R 1942 Pat 544, Ref.; 12 C W N 896, Dist. and 40 Cal. 105, Diss. from. (Courtney-Terrell C. J. and Rowland J.) Bengali Parida v. Banchhanidhi Panigrahi,

A I R 1930 Pat 29=118 I C 326 = 1930 Cr C 5=10 P L T 867=30 Cr L J 894.

——No evidence at all.

Section 146 pre-supposes an enquiry by the Magistrate on the evidence recorded and the object of S. 146 is to give the Magistrate jurisdiction to attach property if, upon the evidence so recorded, he is unable to come to a finding as to who was in possession on the date on which the order under S. 145 was drawn up, and where there is no evidence of any kind on record order attaching

CRIMINAL P. C. (V of 1898), S. 146—7. Magistrate to take evidence

property under S 146 is without jurisdiction, (Chotzner and Lort-Williams JJ.) Daulat Ali v. Hedail Molla

AIR 1928 Cal 703 = 117 I C 600 = 32 C W N 843=30 Cr L J 802.

——Order without enquiry is wrong.

Where no evidence was taken, no statements were made before the Magistrate and he made an order merely on account of an allegation in the written statement of a party as to possession,

Held, the order of attachment is clearly wrong. (Venkatasubba Rao J.) Palani Goundan v. Kulandaivelu Goundan,

AIR 1922 Mad 437 = 43 M L J 716 = 72 I C 541 = 1922 M W N 484 = 24 Cr L J 429.

——Ss. 146 and 145 — Witnesses present not examined—No order can be passed .

An order passed under S. 146 was held not to be valid and was set aside, where none of the witnesses present in Court to give evidence in a proceeding under S. 145 was examined. (Walmsley and Suhrawardy JJ.) Sita Nath Bhagat v. Ramkishore Mondal,

AIR 1922 Cal 280 = 35 Cal L J 291 = 69 I C 272 = 23 Cr L J 688.

——Extension of time—When proper.

When proceedings were drawn up against two parties who were required to produce their evidence on a certain date, the parties on the date applied for further time. One of the parties alleged that notice was served upon him only two days before the date of hearing and did not file even a written statement and when the Magistrate in the absence of evidence was unable to satisfy himself as to who was entitled to possession and accordingly attached the property under S. 146.

Held the Magistrate should have extended time for allowing parties to give evidence. (Atkinson J.) In re Manrakhan Singh

AIR 1917 Pat 507 = 1 Pat L W 55 = 38 I C 973 = 18 Cr L J 413.

——Attachment—Order without evidence.

Where a Magistrate makes an order under S. 146 attaching disputed property without taking any evidence, the order is wholly without jurisdiction and should be set aside. 12 C W N 896 and 14 C W N 80, Ref. (Holmwood and Imam JJ.) Sheobalak Rai v. Bhagwat Panday,

40 Cal 105 = 16 C W N 1052 = 15 I C 486 = 13 Cr L J 486.

——Attachment under — Validity — Refusal of Magistrate to grant time to take regular proceedings and hear evidence — Attachment is liable to be set aside—See Criminal P. C. (1898), Ss. 145, 146, 148,

8 Cr L J 202 (Cal).

8. Joint and separate possession.

——Ss. 145 and 146 — Joint possession — Attachment of disputed property — See ibid, S. 145.

AIR 1953 Orissa 278 = 1953 Cr L J 1596.

——Attachment in case of joint possession—See Criminal P. C. (1898), S. 145.

ILR (1953) 5 Assam 348.

——Scope — Parties found in actual joint possession—Nature of order to be passed — Magistrate if can pass order under S. 146 in such case—See ibid, S. 145 (6).

AIR 1951 Raj 156 = ILR (1951) 1 Raj 265 = 52 Cr L J 1209.

——S. 146 (1)—Both parties in possession of disputed land on date of preliminary order — Order of attachment under S. 146 (1) is not without jurisdiction.

It is not correct to say that once a conclusion is reached that both the parties were in possession of portions of

CRIMINAL P. C. (V of 1898), S. 146 — 8. Joint and separate possession

land in dispute on the date of preliminary order under S. 145, the Court loses all jurisdiction vested in it under S. 146 (1). Hence, an order of attachment under S. 146 (1) is within jurisdiction if neither side has been proved to be in exclusive possession on the date of the preliminary order and neither side had been dispossessed within two months before the order : AIR 1915 Mad 396. Disting. (Rajagopalan J.) Alagirisami v. Chinna Veeramal,

AIR 1949 Mad 461 = 1948-2 M L J 642 = 1949 M W N 115 = 50 Cr L J 659.

——S. 146 (1)—Both parties in joint possession—Applicability of Ss. 145 and 146 — See ibid S. 145.

AIR 1948 Oudh 130 = 49 Cr L J 202.

——S. 146 (1) — Undivided share of a village cannot be attached under S. 146 (1). (Lakshmanarao J.) Muthuswami Thever v. Rajah Ram Pandian.

AIR 1941 Mad 744 = 1941 M W N 703.

——S. 146 (1)—'Unable to satisfy himself, as to which of them was in possession'—Whether includes case of joint owners.

Where there is a dispute between two joint owners of barren land in an urban area and there is a likelihood of a breach of the peace between them, a Magistrate is entitled to pass an order under S. 146, Criminal P. C., directing that the land should be kept in attachment until a decision is made in a civil suit for partition to be filed in the Civil Court.

The words "unable to satisfy, himself as to which of them was in possession' cover the case of two joint owners both in joint possession as, in such a case, it will not be possible for the Magistrate to decide which of them was in exclusive possession. (Bennet J.) Chiranji Lal v. Mahadeo Prasad.

AIR 1932 All 683=(1932) A L J 819=Ind Rul (1933) All 168 = 143 I C 54 = 34 Cr L J 480.

——Ss. 146 and 147—Both parties committing breach — Procedure.

A Magistrate cannot pass an order of attachment under S. 146 when he finds that both the parties are in joint possession. Per Seshagiri Aiyar J. — If both parties in joint possession try to commit a breach of the peace it will not be good to keep them both in possession. A Magistrate has no jurisdiction to pass an order of attachment if both the parties are in joint possession. (10 C W N 1088 : 11 C W N 512 : 17 C W N 205 : 9 C W N 887 : 1 C L J 632, Dist.). (Ayling and Seshagiri Ayer JJ.) Muhammad Koolayappa v. Abdul Khadir,

AIR 1915 Mad 396 = 25 I C 324 = 27 M L J 169= 15 Cr L J 572.

——S. 146 (1)—Order for attachment.

Where each party is found to be in possession of different portions of a disputed land, in that both parties were at the time of an order under S. 145 (1) realising rent from some of the raiyats the Magistrate has no jurisdiction to order attachment under S. 146 (1). In such a case, it cannot be said that neither party was in possession. (Henderson and Giedt JJ.) Rajendra Narain Roy e. Mahomed Arzumand Khan,

9 C W N 887=1 C L J 331=2 Cr L J 408.

9. Decision of competent Court.

——S. 146 (1)—A decision that would enable the Court to raise the attachment and hand over possession to one of the parties to the proceeding or to a stranger, as the case may be, is a decision of a competent Court regarding the subject of the dispute. (Koshi C. J.) James Paul Alexander v. James Arthur Edward,

AIR 1953 Trav-Co 388=1953 Ker L T 304=1953 Cr L J 1566.

CRIMINAL P. C. (V of 1898), S. 146—9. Decision of competent Court

——Parties to proceedings under S. 145 referred to Civil Court for establishing title — Meanwhile property in custody of Receiver—Suit for declaration of title by one party dismissed for default—Restoration application and appeal therefrom, dismissed—Other party applying for possession —Dismissal under O. 9, R. 9, Civil P. C. held not extinguished rights of plaintiff—Either of the parties could sue for profits—Decision in such suit would determine rights and title of parties.

In proceedings under S. 145, the Magistrate passed an order under S. 146 directing that the Village Munsif be appointed receiver for the purpose of holding possession of the disputed properties as the Magistrate was unable to satisfy himself as to which of the parties was then in possession. Accordingly the Village Munsif entered into possession. One of the parties filed a suit for declaration of his title to and possession of the disputed properties. The other party was the sole defendant. The suit was dismissed for default. Application under O. 9, R. 9, Civil P. C., was also dismissed; so also the appeal therefrom, with the result that the plaintiff was debarred from filing fresh suit on same cause of action for same relief. The defendant then applied to the Magistrate, for possession of the properties after the suit was dismissed on the ground that the order of the District Munsif had determined the defendant's rights. The Ma istrate passed the order that there had been no declaration by a Civil Court as to who is entitled to the suit properties and therefore the land would continue to be in the possession of the receiver :

Held, that though the dismissal of the suit prevented the plaintiff from bringing a fresh suit on the same cause of action his rights to the properties, if any, had not been extinguished under S. 28 of the Limitation Act and the parties had got a further remedy. Either of the party would be at liberty to bring a suit for the recovery of profits received by the receiver within the period of limitation and the Civil Court would then adjudicate as to who was entitled to the profits of the land. The adjudication of the rights to the profits would finally determine the title to the property also and thereafter the Criminal Court would be bound to recognise this determination of the rights of the successful plaintiff and hand over the property to whomsoever has succeeded in the civil suit. 26 Mad 410, Rel. on. .(Govinda Menon J.) Ellappa Naicken v. Lakshmana Naicken,

A I R 1949 Mad 71 = 1948 1 M L J 383=61 M L W 365=1948 M W N 415=49 Cr L J 603.

——Property in custodia legis — Declaration of title by Civil Court.

Where at the time of filing a suit by a party to the proceedings under S. 145, the property is in custodia legis under S. 146 all that is necessary for the plaintiff in the suit is to seek a declaration of his title; it is not necessary for him to ask further for possession of the property as the Criminal Court would be bound to respect the declaration made by the Civil Court and to give due effect to it. (Yahya Ali J.) Karunai Ammal v. Karuppan Goundan.

A I R 1947 Mad 373 (1)=1947-1 M L J 337=60 M L W 308=1947 A W R Sup 74=1947 O A Sup 74=1948 M W N 61.

— Ss. 146 (1), 561-A—Magistrate, if can release property after decision of trial Court — Trial Court's decision reversed on appeal—Magistrate, if can pass orders regarding property — Proper remedy for aggrieved party— S. 561 A, if applies.

It is not at all necessary that the final Court of appeal should be considered to be the competent Court within the meaning of the words in Sub-S. (1) of S. 146, Criminal P. C. A Magistrate can, therefore, pass an order releasing

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the property from attachment in favour of a successful party on the decision of a suit by trial Court, even if an appeal from such a decision is pending.

And if the decision is reversed on appeal the Magistrate has no further jurisdiction under S. 145, or S. 146, Criminal P. C., to pass order regarding delivery of possession of property.

Nor can the High Court pass an order under S. 561 A, as it cannot be invoked to override an express provision of law or when there is another remedy open. The reversal of the order of the Magistrate would amount to overriding an express provision of law and further, the party has the remedy of suing for possession on payment of proper court-fee. (Soofi J.) Ashraf Khan v. Abdul Rehman,

AIR 1942 Pesh 11=14 R Pesh 72=198 I C 490 = 43 Cr L J 384.

——Dispute as to trusteeship of temple.

Where, on a petition under S. 145, a Receiver is appointed and the properties are delivered to him and subsequently, the Hindu Religious Endowments Board recognizes a certain person to be the trustee, such person is entitled to the possession of the property though the Board did not also declare him to be entitled to possession of the property. (Lakshmanarao J.) Sesha Reddi v. Narasinha Reddi,

AIR 1941 Mad 803 (2)=1941 M W N 767.

——Collector's order under Bengal Survey Act—Whether decision of competent Court.

An order of the Collector as to the land under Bengal Survey Act is a determination by a competent Court of the rights of the person entitled to possession of the land, within the meaning of S 146, Criminal P. C. (Agarwala J.) Ram Ranbijaya Prasad Singh v. Ram Prasad Gupta,

AIR 1939 Pat 348=20 P L T 595=5 B R 906=12 R P 141=183 I C 388=40 Cr L J 797.

——Civil Court's decision—Value.

It is not proper for a Magistrate on the ground that he is unable to determine which party is in possession to attach the land under S. 146 where the Civil Court has not only determined the rights of the parties but has also determined the possession so far as it was in its power to do so. (Daniels J.) Parabhans Pande v. Sheodarshan Singh,

AIR 1926 All 685=48 All 397=24 A L J 399=7 L R A Cr 102=93 I C 1055=27 Cr L J 559,

——An entry in the finally published record-of-rights cannot be regarded as constituting the final adjudication of a competent Court within the meaning of S. 146 (1), Criminal P. C. (Newbould and Mukerji JJ.) Kutiswar Mondal v. Jitendranath,

AIR 1926 Cal 316=30 C W N 646=87 I C 975 = 26 Cr L J 1055.

——Order of Revenue Court in mutation proceedings is order of competent Court determining the person entitled to possession. (Boys J.) Mt. Ran Sri v. Sri Krishun,

A I R 1924 All 777 = 82 I C 170 = 22 A L J 803=5 L R A Cr 129=46 All 879=25 Cr L J 1242.

——Ss. 145 and 146—Attachment—Duration of.

In proceedings under Chap. XII of Criminal P. C., the attachment should continue only until a competent Court has determined the rights of the parties to the property. The pendency of an appeal from the decision of a Civil Court is no ground for continuing the attachment. (Chevis J.) Emperor v. Abdul Aziz,

A I R 1918 Lah 390 = 46 P W R 1917 Cr = 44 I C 117=19 Cr L J 261.

——Ss. 145 and 146—Attachment by Magistrate — Duty of Magistrate—Remedy of parties.

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Where a Magistrate not satisfied with the possession of either party in an application under S. 145 attached the properties under S. 146 it is unnecessary that there should be decree in favour of all the parties to enable the Magistrate to withdraw the attachment and if there is an adjudication by a Civil Court in favour of some of the parties, that is sufficient for the purpose of enabling the Magistrate to walk out of the property and unless this is done the parties will have no remedy : 29 I. C. 321, Foll. (Seshagiri Aiyar J.) Vithoba Rao v. Narasinga Rao,

A I R 1917 Mad 453=4 L W 55 = 20 M L T 247= (1916) 2 M W N 173=35 I C 507=17 Cr L J 331.

——S. 146 (2) — Jurisdiction — Powers of Magistrate—Receiver.

Where a Receiver is appointed under S. 146 (2) of the Code till a competent Civil Court decides the rights of the parties, the Magistrate ceases to have authority to retain the property after such Civil Court determines the rights of the parties, and he cannot refuse to make over possession to the successful party on the ground that the losing party was going to appeal to the Chief Court. (Twomey J.) Mg Tha Zan v. Mg Ba Gale,

A I R 1914 L B 218=24 I C 588 = 7 Bur L T 293= 15 Cr L J 500.

——Survey authorities.

An order by the Survey authorities under S. 41 of the Bengal Survey Act has the force of a Civil Court decree, and is therefore tantamount to an order passed by a competent Court determining the rights of the parties as provided for in Chap. XII of the Criminal P. C. Such an order being also an order determining the rights of the parties to the original dispute because the parties to that dispute were before the survey Court any lands attached under S. 146, Criminal P. C., should be released from attachment. (Stephen and Carnduff JJ.) Ambler v. Sami Ahmed,

37 Cal 331 = 11 C L J 417 = 6 Ind Cas 545 = 14 C W N 708=11 Cr L J 372.

——Ss. 145 and 146—Possession delivered by Civil Court —Attachment of land by Magistrate.

Where the petitioner was put in possession of lands in execution of a decree of Civil Court establishing his right to them, it is not competent for a Magistrate to pass an order directing the attachment of those lands under S. 146. It is his duty to found possession in accordance with the decree of the Civil Court. (Henderson and Geidt JJ.) Gulraj Marwari v. Sheik Bhatoo,

32 Cal 796=2 Cr L J 761.

10. Order of attachment.

——S. 146 (1) — Order under passed by High Court—Passing of subsequent orders.

When an order which ought to have been passed by the Magistrate under S. 146 (1) is passed by the High Court in revision it is meaningless to say that all further orders that may be found necessary in virtue of the provisions of S. 146 should be passed by the High Court alone. (Koshi C. J.) James Paul Alexander v. James Arthur Edwards,

A I R 1953 Trav-Co 388=1953 Ker L T 304 = 1953 Cr L J 1566.

——Attachment — Possessor dispossessed — Possession given to non-applicant—No power.

While attaching the property a Magistrate has no power to order the party who is in possession at the time of the application to hand over the possession of the property to the non-applicant pending the final decision in the proceedings. He can, after attachment, manage the property subject to his control and supervision. But it is highly undesirable for him to appoint a party to the dis-

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pute to manage the property on his behalf. (Dixit J.) Ram Charan v. Bakhtawar Singh,

A I R 1953 Madh B 95=1953 Cr L J 641.

——S. 146 (1)—Magistrate authorising Sub-Inspector to attach property—Order of attachment, if legal.

An order made by the Magistrate authorising the Sub-Inspector of Police to attach the property if he was satisfied that there was an apprehension of a breach of the peace is absolutely illegal ; he has no power under Criminal P. C., to make any such authorization. (P. L. Bhargava J.) Basdeo v. Badri Narain,

A I R 1952 All 186=1952 All W R (H C) 113=1952 All Cr R 48=1952 Cr L J 379.

——Order under—Reasons for—Necessity of.

There is no justification, statutory or otherwise, for requiring the Magistrate to give the reasons for an order passed by him under S. 146 : Case law Ref. (M. C. Desai J.) Bharosa v. State,

1951 A W R (H C) 507.

——Where the Magistrate is unable to satisfy himself as to which of the parties was in possession at the date of the preliminary order, it is quite open to him to continue the attachment already made till a competent Court has determined the rights of the parties or the person entitled to possession. (Kolhatkar A. J. C.) Jan Mahomed v. Jivan Khan,

A I R 1928 Nag 325=11 A I Cr R 194=111 I C 445 =29 Cr L J 861.

——The jewellery and other moveable property must be treated as appurtenant to the math and an order can be properly passed in respect of it under S. 146 : 1 P. L. J. 386, Foll. (Daniels J.) Gokul Nath v. Baram Nath,

A I R 1927 All 125=93 I C 157 = 24 A L J 383 = 7 L R A Cr 129=27 Cr L J 429.

——Failure to understand Civil Court's decree.

Where the Deputy Magistrate attached the property in dispute, owing to his not understanding the meaning of a Civil Court's decree relating to the same property, his order is irregular and without jurisdiction. (Bucknill J.) Durganand Ojha v. Hiranand Ojha,

A I R 1924 Pat 711=76 I C 24=25 Cr L J 88.

——Ss. 145 (4) and 146—Attachment—Receiver—Powers of—Effect of attachment—Moveables—Joint possession.

The Magistrate has power to appoint a receiver to remain in custody of property attached under S. 145 though the powers of such a receiver may not be the same as that of one appointed under S. 146. S. 145 of the Criminal P. C. does not authorize a Magistrate to attach movable properties.

Burn J.—The mere fact that the both parties claim joint possession will not take away the jurisdiction of a Magistrate to pass final orders under S. 146 where only one party is in actual physical exclusive possession. An attachment of property by a Magistrate under S. 145 or S. 146, Criminal P. C. is not the same as an attachment by a Civil Court, but places the property in the possession of the Magistrate who can ordinarily act only through some agent appointed by him. (Sadasiva Iyer and Burn JJ.) Gopala Iyer v. Krishnaswamy Iyer,

A I R 1920 Mad 209=11 M L W 459=27 M L T 234 =54 I C 473=21 Cr L J 73.

——Attachment of Mahua crop— Jurisdiction of Magistrate—See Criminal P. C. (5 of 1898), S. 145,

3 Cr L J 52 (All).

11. Costs.

——Order for costs — Magistrate competent to pass the order — Proper time at which order is to be made — See ibid, S. 148,

11 Cr L J 335 (Oudh).

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12. Effect of attachment.

——Permission to a party to use land after it is attached is not legal, (M. C. Desai J.) Bharosa v. State,

1951 A W R (HC) 507.

——Attachment— Legal possession for all purposes must be deemed to be with successful party.

When property is attached by Criminal Court under S. 146, Criminal P. C., the legal possession for all purposes including those of limitation is with the successful party on whose behalf the Court holds the property. (Digby J.) Madhorao Raghunath v. Amirkhan,

AIR 1943 Nag 246 = 1943 N L J 369 = 17 RN 88 = I L R (1943) Nag 752=208 I C 58=44 Cr L J 739.

——Property attached — Order of competent Civil Court —Attachment ends automatically.

When an order of attachment of the disputed property is passed under S. 146, Criminal P. C., the Criminal Court has power to take possession of the property, and furthermore, during the continuance of such attachment in accordance with the terms of S. 146, can use its powers as a Court to make the attachment effective and summarily eject a third party at any time by its own judicial process and judicial power. The attachment however automatically ends when the order of a competent Civil Court is passed. Hence, if the Receiver is dispossessed after the attachment comes to an end by reason of the decision by the Civil Court, the Criminal Court cannot thereafter eject the trespasser and deliver possession to the successful party. The power to deliver possession subsists only during the continuance of attachment. (Digby J.) Madhorao Raghunath v. Amirkhan.

AIR 1943 Nag 246 = 1943 N L J 369 = 16 R N 88= ILR (1943) Nag 752=208 I C 58=44 Cr L J 739.

——Attachment under S. 146, Criminal Procedure Code (Act V of 1898) and that in execution of Civil Court's decree—Distinction.

A Magistrate acting under S. 146, Criminal P. C., takes the property out of the possession of the disputants and the subsequent possession of the Receiver is in law treated as possession on behalf of the true owner and not of the party previously in possession without title. But an attachment in execution does not prevent the judgment-debtor and much less a third party from continuing to enjoy the property ; there is accordingly no occasion for the application of the rules relating to "constructive possession." The same consideration furnishes the ground of distinction between cases relating to vis major and attachment in execution. In the former case, the land has ex hypothesi become incapable of actual possession ; and the doctrine of constructive possession can be invoked only by the true owner and not by a person who has to rely on adverse possession. (Varadachariar, Lakshmanarao and Gentle JJ.) Dharapuram Janopakara Nidhi Ltd. v. Lakshmi Narayana Chettiar,

AIR 1939 Mad 456=49 M L W 671 = 1939 M W N 488=(1939) 1 M L J 802 = 12 R M 239= I L R (1939) Mad 803=182 I C 999 (FB).

——Suit for recovery of land brought six years after attachment under S. 146, Criminal Procedure Code, if barred—Limitation Act, S. 23.

Suits brought for the recovery of property after attachment under S. 146, Criminal P. C., are cases of a continuing wrong within the meaning of S. 23, Limitation Act, and such suits brought more than six years after attachment are not barred. (Dhavle J.) Ghamandi Misser v. Jagarnath Misser.

AIR 1938 Pat 212 = 10 R P 600 = 4 B R 558 = 175 I C 256.

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——Attachment of property and appointment of Receiver by Magistrate :

Held that a suit for mere declaration of title without a prayer for possession is maintainable. (Addison and Agha Haidar JJ.) Mohammad Habib Khan v. Badi-ul-Zaman Khan,

AIR 1933 Lah 195 = 34 P L R 242=.Ind Rul (1933) Lah 91=14 Lah 414=141 I C 443.

——Where a Magistrate passes an order under S. 146, Criminal P. C., a person claiming the property need only sue for a declaration.

But where the Magistrate interfered with the possession of the defendants because an emergency had arisen and decided that retention of the sale proceeds was unnecessary, and ordered them to be handed over to the defendants, held, the Magistrate was holding the same on behalf of the defendants, and plaintiff's suit must be one for possession and ad valorem fees calculated on the value of the subject-matter in dispute must be paid. (Macnair A. J. C.) Sakharam v. Tukaram,

AIR 1927 Nag 316=103 I C 351.

——No breach of peace— Decision of competent Court regarding possession.

Once an order under S. 146, Criminal P. C., has been passed by a Court it can come to an end only under one of two circumstances, the first being that there is no longer any likelihood of a breach of the peace in regard to the subject-matter of the dispute, in which case the Magistrate would be competent to withdraw the order of attachment and he can do so at any time at which there is no such likelihood; and secondly, it is competent for a Magistrate to release the subject-matter of the dispute from attachment if a competent Court has determined the rights of the parties to the proceedings of the person entitled to possession of the subject-matter of the dispute. (Newbould and Mukerji JJ.) Kutiswar Mondal v. Jitendranath,

AIR 1926 Cal 316 = 87 I C 975= 30 C W N 646=26 Cr L J 1055.

——Attachment under — Custody of Court enures for benefit of true owner.

A property attached under S. 146 of the Code passes into legal custody, such custody being for the benefit of the true owner. If the true owner was in possession at the time of attachment his possession is not interrupted. But if a wrongdoer was in possession the effect of the attachment is to interrupt his possession and revive the possession of the rightful owner. (Mookerjee and Panton JJ.) Sarat Chandra v. Bibhabati Debi,

AIR 1921 Cal 584=66 I C 433=34 C L J 302.

——Mesne profits during attachment — Jurisdiction of Magistrate.

A Magistrate has no jurisdiction to pass an order regarding mesne profits during attachment of property under S. 146, Criminal P. C., arising out of a dispute under S. 145 of the Code, but the proper course for him is to deposit the money in Court and allow the parties to litigate their rights in respect of the shares due to them for mesne profits. (Seshagiri Aiyar J.) Vithoba Rao v. Narasinga Rao,

A I R 1917 Mad 453 = 4 L W 55 = 20 M L T 247= (1916) 2 M W N 173=35 I C 507=17 Cr L J 331.

——Attachment order —Magistrate is not liable.

No cause of action can be brought against a Magistrate for recovery of possession of property attached under S. 146, Criminal P. C. (Mookerjee and Beachcroft JJ.) Brojendra Kishore Roy v. Bharat Chandra Roy,

AIR 1916 Cal 751 = 22 C L J 283 = 31 IC 242 = 20 C W N 481.

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——Attachment — Duty of Magistrate.

An attachment under S. 146 remains in force until withdrawn but it is the duty of the Magistrate to withdraw it and release the attachment as soon it is brought to his notice, that a competent court has determined the rights of the parties thereto or of the person entitled to possession. (Ayling, J.) Maharaja of Venkatagiri v. Ambarkana Srinivasa Rao.

A I R 1916 Mad 507 = 29 I C 321 = 17 M L T 392 = 16 Cr L J 481.

——No action for damages will lie against a person for procuring an erroneous order of attachment from the Magistrate. (Chatterjee J.) Mackay v. Cave.

9 I C 137=12 Cr L J 14 (Cal).

13. Withdrawal of attachment.

——S. 146 and S. 537—Restoration of possession—Failure to give notice — (Travancore Criminal P. C. (8 of 1117), S. 144).

The Criminal Court can continue the attachment only until a competent Court has determined the rights of the parties or the person entitled to possession of the property. The failure to give notice to the party at whose instance the property was placed under attachment, before handing over possession to the other party who has been found by the competent Court to be entitled to possession, is at the worst only an irregularity and does not vitiate the order of the Magistrate removing the attachment and ordering the receiver to hand over possession. (Kumara Pillai J.) Kurien Chacko v. Varkey Varkey,

A I R 1953 Tra-Co 589 = 1953 Ker L T 524 = I L R (1953) T C 1048 = 1953 Cr L J 1827.

——S. 146 (1), Proviso — Applicability.

The proviso has no application where there is no agreement between the parties to the proceedings as to whom the Magistrate may give possession pending decision by the Civil Court. (Koshi C. J.) James Paul Alexander v. James Arther Edwards,

A I R 1953 Tra-Co 388 = 1953 Ker L T 304 =1953 Cr L J 1566.

——Ss. 146, 145 — Restoration of possession — Scope — (Hyderabad Criminal P. C., S. 148).

It is undisputable that when the Magistrate comes to the conclusion that there is no likelihood of breach of peace, the only way he can do is that he should return the possession of the land to the party from whom it was taken. But where the police did not prepare a panchanama at the time of taking possession of land in the Court's custody and therefore the Magistrate proceeded to consider the evidence and came to the conclusion that at the time of the order or two months prior to it, the possession of neither party was established, his direction that the land be kept in the possession of the Court and parties to resort to a Civil Court was appropriate. (Siadatali Khan J.) Abugunda v. Devgunda,

A I R 1953 Hyd 253 = I L R (1953) Hyd 403 = 1953 Cr L J 1524.

——Withdrawal of attachment.

Under S. 146, it is the duty of the Magistrate to withdraw the attachment and release the property as soon as it is brought to his notice that a civil Court of competent jurisdiction has determined the person entitled to the possession.

Section 146 is wide enough to cover third persons who are declared to be entitled for possession of the property even though they are not parties to the original proceedings under S. 145.

Though the power of the Court to direct handing over of the crops cannot be strictly attributed to the exercise

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of judicial functions under S. 146, there appears to be no impediment to release the attachment in respect of the crops that were held by the Receiver on behalf of the Court for the benefit of the person declared by the civil Court to be entitled (Bala Krishnaiya J.) Narayanappa v. D. V. Narayanamurthy,

A I R 1952 Mys 77=30 Mys L J 134=1954 All W R (Sup) 40 = 1952 Cr L J 1222.

——Party can be left in possession.

It is open to the Magistrate under the proviso to make over possession of the property to any person that he thinks fit. He must of course exercise a judicial discretion in deciding to whom the possession is to be given. There may be cases in which it is sufficient for him to make an order withdrawing the attachment and leave some party to take possession but it is also open to him to make over possession to any one according to his discretion. (Simpson A. J. C.) Ali Bahadur v. Emperor,

A I R 1926 Oudh 146=90 I C 925 = 2 O W N 868= 26 Cr L J 1629.

——Subsequent decision though not inter partes.

An underground colliery together with certain huts and workings on the surface of the land were attached under S. 145 on 29th March 1922. On the 27th of March 1923 the Subordinate Judge gave a decision relating to a money claim put forward by some person against some members of the second party, as certain rights in respect of the colliery purported to be demised by some of the second party to the plaintiff in that suit had failed. With respect to the ownership of the colliery some part of which was the subject-matter in dispute under proceedings under S. 145, Cr. P. Code, the Sub-Judge came to the conclusion adverse to the rights of the members of the second party. The first party upon this applied to the Magistrate for withdrawal of the attachment and for declaration of possession in accordance with the decree of the Sub-Judge. The Magistrate granted the prayer.

Held, that the Magistrate had jurisdiction to pass the order under sub.s. 1 of S. 146, Cr. P. Code, in view of the decision of the Sub-Judge. (Greaves and Panton, JJ.) Ases Kumar Misra v. Kissori Mohan Sarkar,

A I R 1924 Cal 812 = 39 C L J 353 = 81 I C 553 = 25 Cr L J 937.

——Attachment of property — Criminal Court—Jurisdiction of.

Under S. 146 of the Code of Criminal Procedure the Criminal Court after attaching the property is functus officio unless the subsequent event occurs of a competent court determining the rights of the parties to the property or the person entitled thereof. (Ashworth, J. C.) Surendra Bikram Singh v. Emperor,

A I R 1922 Oudh 300=25 O C 242 = 73 I C 153=24 Cr L J 537.

——Attachment of property—Release — Inherent power.

Section 146 of the Cr. P. Code is not exclusive and an attaching Magistrate has an inherent power to release from attachment when the likelihood of the breach of the peace has disappeared. (Wilberforce, J.) Khushi Ram v. Emperor,

A I R 1920 Lah 286 = 6 P W R (Cr) 1921 = 1 Lah 451 = 59 I C 36 = 22 Cr L J 4.

[The section itself now provides for such power—Ed.]

——S. 146 (1) — Attachment—Cancellation before termination of proceedings.

An order of attachment passed under S. 146 (1) must be kept in force till the adjudication of the rights of the parties by a competent Civil Court. A Magistrate has no jurisdiction to cancel an attachment as a result of further

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enquiry and adjudication by him as to the right of possession. 26 Mad 410, Foll. (Spencer, J.] Guruvanna Gowd v. Govindappa.

A I R 1919 Mad 953 = 44 I C 971 = 19 Cr L J 443.

[But proviso to cl. (1) newly added now enables a magistrate to cancel the attachment—Ed.]

14. Appointment of Receiver.

——The appointment of a Receiver under S. 146 (2), Criminal P. C., can only be made after a final order has been passed under S. 146 (1), attaching the property. (Burn, J.) Ram Krishna Pillai v. S. Narain Chettiar,

1933 M W N 917.

——Section 146 (2) cannot be so read as to make its provisions apply to attachment under S. 145 (4). 1910 M W N 821 and 3 P L J 147, Foll; 91 P R 1912, Not foll. (Dalip Singh J.) Diwan Chand v. Emperor,

A I R 1929 Lah 223 = 115 I C 29 = 30 P L R 23 = 10 Lah 800=12 A I Cr R 375=30 Cr L J 411.

——A Court should not place the disputed property which is attached under S. 146 in the actual possession of persons who are parties to the proceedings and who are found not to have been in possession of the disputed property irrespective of any prejudice or not to any party to the proceedings. (Das and James JJ.) Mt. Lachmi Kuar v. Gajadhan Proshad,

A I R 1927 Pat 393= 104 I C 104 = 7 Pat 1 = 9 I A Cr R 8=9 P L T 109=28 Cr L J 776.

——Scope of — Attachment by itself does not justify appointment of receiver.

The passing of an *ad interim* order of attachment does not by itself justify the appointment of a receiver, unless on a subsequent inquiry the appointment of a receiver is found necessary, where the Magistrate is unable to decide which party is in possession or decides that none of them is in possession. (Kanhaiya Lal J. C.) Raza Husain v. M. Husain Mirza,

A I R 1922 Oudh 256=25 O C 148=69 I C 268 = 10 O L J 157=23 Cr L J 684.

——S. 146 (2)—Receiver—Appointment under—Jurisdiction of civil Court to appoint again — C. P. Code, O. 40, R. 1.

A civil Court has no power to appoint a Receiver under O. 40, R. 1, Civil P. C. in supersession of the Receiver appointed by the Magistrate under S. 146 (2), Criminal P. C. except conditionally on the Magistrate's withdrawing his attachment. (Sharfuddin and Richardson JJ.) Bidya Prosad v. Asrafi Singh,

40 Cal 862=20 I C 269=17 C W N 1070.

[But see the proviso to cl. (2) newly added:—Ed.]

——Ss. 145 and 146—Receiver.

Before the termination of the proceedings under S. 145, if a Magistrate were to appoint a Receiver under S. 146 (2) his order was ultra vires and without jurisdiction. (Ayling J.) Lakshimi Narayan Reddi v. Ganaprakasa,

15 I C 808=13 Cr L J 536 (Mad).

——Ss. 145 (4), 146 — Attachment of lands and crops harvested—Legality—Receiver—Powers of.

A Magistrate can attach not only the land in dispute but also the "crops harvested and rents received since disturbance." An appointment of a Receiver under S. 145 is not prohibited but he cannot exercise all the functions that a Receiver appointed under S. 146 can exercise. A Receiver appointed under the former section must be treated as an agent or servant of the Magistrate whose order is only an administrative order passed for the management of the property. (Sankaran Nair J.) Srinivasa Pillai v. Sathyappa Pillai,

14 I C 759=13 Cr L J 295 (Mad).

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——Possession of Receiver—Nature of.

The possession of a Receiver appointed in a proceeding under S. 145 is the possession of the party who will ultimately be found to have been in possession prior to the appointment of the Receiver. (Benson and Abdur Rahim JJ.) Ismail Gami Ammal v. Katima Rowther,

10 M L T 573 = 22 M L J 154 = 13 I C 216 = 13 Cr L J 23.

——Rights of receiver appointed under section.

As a general rule, a Receiver takes no title in property acquired by the person formerly in possession. But he is entitled to accretions to the property vested in him. A Receiver appointed under S. 146 in respect of any property in dispute, is entitled, unless some special circumstance is established not only to the subject-matter of the proceedings under S. 145, but also to the accreted land, and gives good title to a tenant under him which will prevail against a trespasser but not against a person who establishes a title to the accreted land acquired prior to the vesting of the lands in the Receiver. (Mookerjee and Teunon JJ.) Madhu v. Sabar Ali,

14 C W N 681=6 I C 177=11 Cr L J 288.

15. Settlement by or with Receiver—Effect.

——Civil Procedure Code O. 40, R. 1 — Dispute as to immovable property — Appointment of Receiver — Lease by Receiver to party in collusion — Power of Court to set aside lease summarily.

Where a Receiver appointed by the Court in a proceeding under S. 145, Criminal P. C., applied to the Court for permission to lease the properties without disclosing the fact that he intended to lease the properties to one of the parties and as he got permission, granted a lease of the properties to one of the parties until the decision of the civil Courts:

Held, that as the Receiver had committed a fraud upon the Court, the Magistrate had power to set aside the case summarily. (Bardswell J.) Meyyappa Chettiar v. Nagamai Achi,

A I R 1933 Mad 67 (2) (69) = Ind Rul (1932) Mad 834 = 36 M L W 651 = (1932) M W N 1154= 140 I C 281=33 Cr L J 956.

——Receiver under — Settlement of agricultural land — Effect of, on civil Court decree and on parties.

The possession of a person taking settlement of lands attached under S. 146, Criminal P. C. from the Receiver appointed under that section cannot be such as to affect the rights of the person whose title may be declared by the civil Court. An attachment is made under S. 146 for the purpose of preventing a breach of the peace, and the attachment is to last until a competent Court has determined the rights of the parties to the land in dispute or the person entitled to possession thereof. When a competent Court has determined the rights of the parties or the person entitled to possession of the lands in dispute, it is the duty of the Magistrate to withdraw the attachment and to make over possession to such party. Any act done by the Receiver appointed under S. 146 during the period of attachment cannot and ought not to prejudicially affect the rights of the party found by the Court to be entitled to possession of the land in dispute. The settlement made by a Receiver of attached land can enure only during the period of such attachment and no right can be created under such settlement which might prejudicially affect the rightful owner of the land, otherwise it may lead to future complications. The rights of the parties in whose favour the competent Court may make a declaration cannot be affected by any act done by the Receiver and such party is entitled to possession of the land as it was at the time of the attachment.

CRIMINAL P. C. (V of 1898), S. 146—15. Settlement by or with Receiver—Effect

Settlement made by a Receiver appointed under S. 146, Criminal P. C., does not give a person holding under such settlement, the rights of an under-raiyat. The utmost that he can ask for is a declaration that he is entitled to retain possession up to the end of the agricultural year in which the decree is pronounced by the civil Court but beyond that he can go no further and he is not even entitled to a notice to quit before he can be ejected. His possession is merely that of a licensee or a farmer and he is bound to give up possession as soon as the attachment is withdrawn as an effect of the decree of the competent Court.

The mere declaration of title in favour of the plaintiffs is sufficient to entitle them to ask the Receiver appointed under S. 146, Criminal P. C., to make over the sum held in deposit by him to the plaintiffs. (Kulwant Sahay and Macpherson JJ.) Jurawan Singh v. Ram Sarekh Singh,

A I R 1933 Pat 224 = 14 P L T 113 = 12 Pat 261 = 6 R P 620 (2)=149 I C 561.

16. Review.

——Ss. 146 and 145—District Magistrate cannot upset order of Magistrate.

An order passed in a proceeding under S. 145 cannot be upset by the Magistrate of a District; the remedy is to move High Court in revision or to go to the Civil Court for a decision of the claims of the parties. The notice issued by the Deputy Commissioner stating that, unless a civil suit is brought within a certain period, the lands would be released from attachment and handed over to one of the parties cannot stand. He would not be able to review his order in the above manner. (Adami J.) Ram Kumar Lal v. Thakur Ojha,

A I R 1922 Pat 554=3 Pat L T 648 = 68 I C 402 = 1922 Pat H C C 224=4 U P L R (Pat) 52=1 Pat L R Cr 12=23 Cr L J 562.

——Ss. 145, 146 and 439—Attachment — Breach of the peace—Review of orders under S. 146—Revision.

Where there is no likelihood of a breach of the peace regarding a plot the Magistrate has no jurisdiction to initiate proceedings under S. 145, Cr. P. C., in respect thereof and without such proceeding no order of attachment under S. 146, Cr. P. C., could be passed. The Magistrate had no powers to review his own order releasing the plot from attachment. (Jwala Prasad J.) Ballam Singh v. Lal Babu,

A I R 1917 Pat 28=3 Pat L W 386=43 I C 329=19 Cr L J 105.

17. Revision.

——Where a Magistrate passes a cryptic order under S. 146 without even referring to the voluminous evidence on record which shows that he had not applied his mind to the facts of the case the order will be set aside in revision. (Beg J.) Ayodhya Nath v. Ganga Prasad,

A I R 1953 All 751=1953 All L J 418=1953 All W R (H C) 332=1953 Cr L J 1717.

——"Unable to satisfy himself as to which of parties was then in possession."

Where both oral and documentary evidence was produced before the Magistrate but he did not make any attempt to weigh the same and did not apply his judicial mind to it with a view to come to the conclusion whether one party or the other was in actual possession within two months of the preliminary order:

Held, that the order attaching the property under S. 146 was liable to be set aside. (K. K. Sharma J.) Diwan Singh v. State,

1953 Raj L W 410.

CRIMINAL P. C. (V of 1898), S. 146—17. Revision

——It is seldom that the High Court interferes on facts with an order passed under Ss. 145 and 146, Criminal P. C. (Mohammad Noor J.) Saudi Mahto v. Sukh Lal Mahto,

A I R 1934 Pat 33=6 R P 426=148 I C 198 = 35 Cr L J 611.

——Interference in.

The High Court, in the exercise of its revisional jurisdiction, should not lightly interfere with orders that may be passed by the Magistrate for the management of the attached properties under S. 146 of the Code. But where the order of the Magistrate offends against an elementary rule founded on the desire of the Courts to place the parties to a proceeding on a footing of absolute equality the order must be set aside. (Das and James JJ.) Mt. Lachmi Kuar v. Gajadhar Proshad,

A I R 1927 Pat 393=104 I C 104=7 Pat 1=9 A I Cr R 8 = 9 P L T 109=28 Cr L J 776.

——Brevity of order under—Revision.

It is impossible to lay down a hard and fast rule when the High Court should interfere on the ground of brevity of the order passed in a proceeding under S. 146. (Newbould, and Suhrawardy JJ.) Kanai Lal v. Hyder Ali,

A I R 1923 Cal 483 (1)=37 Cal L J 127=73 I C 271 =24 Cr L J 575.

——Ss. 145, 146 and 435 (3)—Decision of Revenue Courts —Land Revenue Act, S. 40.

Revision will lie against an order under S. 146 releasing a property from attachment on the finding under S. 40, U. P. Land Revenue Act in mutation proceedings if Revenue Courts have no power to declare who is entitled to possession (Ashworth J. C.) Surendra Bikram Singh v. Emperor,

A I R 1922 Oudh 300=25 O C 242=73 I C 153 = 24 Cr L J 537.

——General remarks about evidence insufficient.

The general remark in an order under S. 146, Criminal Procedure Code, that the oral evidence is not reliable without referring to it and without giving any reason, is not a disposal of the evidence upon the record; it amounts to a refusal to exercise the jurisdiction vested in a Magistrate by law and is remediable by the High Court in revision. 63 I. C. 152 and 57 I. C. 169, Foll. (Kulwant Sahay J.) Lakhpat Gope v. Emperor,

A I R 1923 Pat 588=4 P L T 579 = 1 Pat L R 152 Cr=72 I C 544=24 Cr L J 432.

——Ss. 146 and 145—Remark that evidence is not reliable—Refusal to exercise jurisdiction — Revision.

Where a Magistrate in passing an order under S. 146, makes a general remark that the evidence is not reliable without referring it or giving reasons, it is not a disposal of the evidence upon record but amounts to refusal to exercise jurisdiction, liable to revision by High Court. An order declaring certain persons to be in possession of property in dispute on the happening of a contingency is not one under S. 146, but under S. 145. (Jwala Prasad J.) Lachmi Ojha v. Birja Missar,

A I R 1921 Pat 173=(1921) Pat HCC 110=63 I C 152 =2 Pat L T 168=22 Cr L J 616.

——Ss. 145 (4) and 146—Attachment—Judgment without evidence.

An order by a Magistrate under S. 146, must be set aside, if made without going through the documentary evidence. (Richardson and Shamsul Huda JJ.) Ambica Nath Roy v. Wajid Ali Khan,

A I R 1919 Cal 99=50 I C 822=23 C W N 910 = 20 Cr L J 342.

——Ss. 146 and 439—Order of attachment — Possession not investigated—Order without jurisdiction.

CRIMINAL P. C. (V of 1898), S. 146—17. Revision

An order of attachment under S. 146 without any attempt to decide the question of possession although both parties claimed to be in possession and were ready to adduce evidence in support of their contentions, is not really within the purview of Chap. XII of the Cr. P. Code and could be revised under S. 439 of the Cr. P. Code, 2 P. R. 1899; 23 P. R. 1902 and 4 I. C. 860, Foll. (Drake-Brockman J. C.) Abdul Rashid Khan v. Khandu,

A I R 1919 Nag 158=49 I C 101=20 Cr L J 117.

——Ss. 145 (4) and 146—Attachment—Duty of Magistrate—High Courts power of revision—Govt. of India Act, S. 107.

In a dispute under S. 145, Cr. P. C., a High Court cannot interfere on the merits so long as the Magistrate is acting within his jurisdiction. Under S. 145 the Magistrate must first make an order in writing stating the grounds of his being satisfied that a dispute likely to cause a breach of the peace exists. He cannot be satisfied about this merely on the police report and if he acts merely on the police report, his order is illegal. Before ordering an attachment, he must decide either that none of the parties was in possession or that he is unable to satisfy himself as to which of them was. An order of attachment if made without one or other of these findings would be without jurisdiction and High Court can interfere under S. 107 of the Govt. of India Act. (Walsh J.) Nathu Ram v. Emperor,

A I R 1917 All 262=39 I C 701=15 A L J 270 = 18 Cr L J 557.

——Order passed without taking evidence — Revision — Power of High Court—See ibid, S. 145,

6 Cr. L J. 452 (Cal).

——Ss. 146 and 435—Revisional powers of High Court.

The High Court has no power to interfere in revision with an order passed under S. 146, but if the Magistrate has exceeded the powers given him by the section though, ostensibly, he acts under it the High Court will interfere. (Batty and Aston JJ.) In re Sanganbasawa Kom Basappa,

7 Bom L R 18=2 Cr L J 28.

—S. 147.

See ibid, S. 145.

SYNOPSIS

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1. Scope of the section.

——Ss. 147 and 144—Order under S. 144 passed—Effect of — Institution of proceedings under S. 147 during pendency of that order.

CRIMINAL P. C. (V of 1898), S. 147 — 1. Scope of the section

Where a Magistrate passes an order under S. 144 directing A not to trespass upon a strip of land belonging to B and not to cause obstruction or annoyance to B in construction of a house on that land, and on the following day, A files an application under S. 147 before the same Magistrate, so long as that order remains in force, the Magistrate has no jurisdiction to go into the question as to whether or not there was a likelihood of a breach of the peace, having regard to the fact that that question had already been resolved by him by his previous order. So far as B is concerned, there being an order in his favour, no question of his being a party to a breach of the peace arose. If A elected to disregard the order of the Magistrate passed against him it was scarcely open to him to allege a breach of the peace and thereby induce the Magistrate to take action under S. 147. The proper course for the Magistrate was to deal with him for the breach of the order if and when he attempted to disturb the peace and not to encourage him by entertaining proceedings under S. 147. (Thadani C. J. and Ram Labhaya J.) Radhanath Barthakur v. Banarashiram Sahu,

A I R 1951 Assam 77 = I L R (1950) 2 Assam 386.

——Right of way — Section applicable is S. 147 and not S. 145 — Notice and preliminary order under S. 145 — Proceedings under S. 147 are not invalidated.

Where the dispute is regarding right of way the proper section applicable is not S. 145 but S. 147.

Under S. 147, the mode of enquiry is the same as for S. 145. The fact that notice issued was one under S. 147 and that the preliminary order passed was one under S. 145 would not invalidate proceedings under S. 147 : A I R 1925 Cal 1022; A I R 1936 All 320; A I R 1924 Bom 452 and A I R 1939 Pat 206, Rel. on; A I R 1933 Lah 145, Dissent. (Hemeon J.) Emperor v. Abdullah,

A I R 1949 Nag 275 = 1949 N L J 40=I L R (1949) Nag 388 = 50 Cr L J 693.

——Where the general public have no interest at all in a certain property in possession of its owners, a Magistrate cannot properly pass any order allowing other people to enter upon such property and perform ceremonies upon it against the owner's wish. In any event, if the Magistrate feels that he ought to do so in the interests of the public peace, it is at least necessary that he should hold some enquiry under S. 147, Criminal P. C., in order to discover for himself, pending any decision by a Civil Court, whether other persons have any right to the user of the land in the manner in which they desire to use it. (Allsop J.) Abdul Majeed v. Emperor,

A I R 1939 All 182 = 11 R A 470 = 1938 A W R (H C) 851 = 189 I C 499 = 40 Cr L J 383.

——One party's right to drain off surplus water enclosed by alang of other party — Other party having right of irrigation — Dispute — Magistrate issuing notice under S. 144, Criminal P. C. :

Held, that the case fell within S. 147 and not S. 144, and that the notices issued should be considered equivalent to the notices to be issued under S. 147 (1), Criminal P. C. (Rowland J.) Inder Deo Narayan v. Durga Prasad Singh,

A I R 1936 Pat 59 = 17 P L T 22=2 B R 263 (2) = 8 R P 397 (2) = 160 I C 945 = 37 Cr L J 378.

——Procedure.

Where in a case under S. 147 regarding a dispute about water course a witness stated that there would be a fight if the other party would demolish a certain bund.

Held, that there was sufficient material for a Magistrate to hold that there was a danger of the breach of the peace and the proper course to adopt would be to place both sides on security under S. 107, Criminal P. C., and leave them to have their rights settled by the Civil Courts. (Broadway J.) Ahmed Din v. Jiwan,

A I R 1926 Lah 550 = 95 I C 465 = 27 Cr L J 801.

——Right of worship.

Where the real dispute between the parties was as to the right to worship in the temple and not as regards the possession of the temple :

Held, that the proper section under which action should be taken by the Magistrate to prevent a breach of peace is S. 147 and not S. 145 : 16 M L T 427; 29 Mad 237 and 11 Mad 323, Rel. on; 17 Cr L J 235, Dist. (Krishnan J.) Sinnaswami Chetti v. P. Palani Goundan,

A I R 1925 Mad 779 = 48 M L J 528 = 88 I C 2 = 26 Cr L J 1057.

——Ss. 147, 146 and 145 — Applicability of.

Section 147 applies only to cases of disputes about the right of use of any land or water as distinct from disputes as to title or possession of the land itself, for which latter provision is made by Ss. 145 and 146. (Kanhaiya Lal A. J. C.) Ram Dulare v. Ajudhya Singh,

16 O C 192 = 21 I C 477 = 14 Cr L J 605.

2. Nature of proceedings.

——Section 147 already says that the procedure should be as under S. 145, which excludes filing of written statement, taking down evidence, and local investigation. (Holmwood and Sharfuddin JJ.) Abdool Rackman Mia v. Safar Ali,

15 C W N 667 = 9 I C 262 = 12 Cr L J 43.

3. Who may institute proceedings.

——Magistrate refusing to take action — High Court, if can order him to initiate such proceedings.

The High Court cannot order a Magistrate to initiate proceedings under S. 147, Criminal P. C., or under any of the preventive sections of that Code when he has refused to take action thereunder. The Magistrate is responsible for the peace of the district and when he says that it is not a proper case under S. 147, Criminal P. C., and, therefore, no action is necessary, it is not competent for the High Court to interfere with such an order. (Verma J.) Biswas B. B. v. Muchiram Mahata,

A I R 1939 Pat 111 (112) = 5 B R 389 = 20 P L T 194 = 11 R P 497 = 180 I C 332 = 40 Cr L J 345.

4. Magistrate to be satisfied.

——After preliminary investigation, Magistrate finding apprehension of breach of peace — Whether can institute proceedings under S. 147.

Where the Magistrate, to whom an application under S. 147, Criminal P. C., is made, holds after some preliminary investigation that there is an apprehension of breach of peace, he can direct proceedings to be drawn up under S. 147. (Bartley and Lodge JJ.) Khoda Bux v. Mozaharul Haque,

A I R 1940 Cal 330 = 44 C W N 623 = 13 R C 80= 189 I C 354=41 Cr L J 728

5. Dispute causing breach of the peace.

——Dispute likely to cause breach of peace.

The fact that the counter petitioners were running away at the very sight of the petitioners is not sufficient reason to infer that there is no likelihood of a breach of the peace, as even running persons may be chased and caught and beaten and a breach of the peace caused. (Panchapakesa Ayyar J.) Satyanarayana Murthy v. Krishna Iyer,

A I R 1950 Mad 593 = 63 M L W 366 (1) = 1950-1 M L J 519=1950 M W N (Cr) 109 (1) = 1950 M W N 900=51 Cr L J 1508.

——S. 147 (1) — Magistrate, if bound to take proceedings under section.

CRIMINAL P. C. (V of 1898), S. 147 — 5. Dispute causing breach of the peace

Even if a dispute likely to cause a breach of the peace exists, a Magistrate is not bound to proceed under S. 147. He may take action under S. 144 or S. 107. But ordinarily the proper course for a Magistrate would be to take action under this section rather than to make temporary orders under S. 144 or S. 107, without an inquiry into the respective claims of the parties. (Ram Labhaya J.) Gobardhandas v. Chaturbhuj,

A I R 1950 Assam 165=I L R (1951) 3 Assam 52.

——Dispute relating to right exercisable only at particular seasons — Magistrate starting proceeding under S. 147 cannot drop it when season is over and cannot pass order which could not be properly passed after hearing all evidence.

When the dispute relates to a right exercisable only at particular seasons, it cannot be the law that it is open to the Magistrate to start a proceeding under S. 147 not only to drop it when the season is over but in addition, to pass an order against one of the parties which could only be properly passed after hearing all the evidence that the parties may desire to produce in the case. Where a Magistrate is satisfied that a dispute requiring to be dealt with under the Ss. 144, 145 and 147 does exist, it is clearly necessary that he should proceed with the matter in accordance with the law, and the High Court cannot permit him to abuse the procedure by dropping the proceedings on an untenable ground and indirectly passing an order which he could not directly have passed without hearing all the evidence. (Dhavle J.) Dwarka Singh v. Jamuna Singh,

A I R 1941 Pat 281=7 B R 860=14 R P 72=194 I C 793=42 Cr L J 620.

——Dispute likely to cause breach of peace in future, if enough.

For the purpose of initiation of proceedings under S. 147, Criminal P. C., the Magistrate must be satisfied that a dispute likely to cause a breach of the peace exists. If there is no present danger of a breach of the peace, the fact that there is a dispute which is likely to cause a breach of the peace in the future, will not justify a Magistrate taking action under S. 147. There should be a present dispute, and a present fear of disturbance and the section will not apply to a state of things indicating that there may be a breach of the peace in future. (Guha and Lodge JJ.) Jagabandhu Misra v. Manager, India Jute Mills, Serampur,

161 I C 338=8 R C 507=40 C W N 351 =37 Cr L J 512.

——Ss. 147, 145 — Base of jurisdiction — Imminence of breach of peace—Proceedings under S. 145 — Arbitration —Failure of arbitration—Revival of proceedings — Jurisdiction.

The jurisdiction of a Magistrate under Chap. XII of the Criminal P. C., is solely based on the imminence of a breach of the peace. What the Crown and the parties want is a decision as to their present rights and a decision which will be effectual to prevent a breach of the peace.

Pending the proceedings under S. 147, Criminal P. C., the parties agreed to refer the dispute to arbitration. The Magistrate thereupon stayed further proceedings. After the arbitration proceedings, which had been pending for about a year, became ineffectual, the Magistrate, without recording a fresh proceeding and without stating the information and the ground on which he was satisfied as to the existence of a dispute likely to cause a breach of the peace, continued the proceedings under S. 147 :

Held, that the Magistrate had no jurisdiction, as there was no allegation of any likelihood of a breach of the peace after the arbitration proceedings ceased, and that

CRIMINAL P. C. (V of 1898), S. 147 — 5. Dispute causing breach of the peace

the order of the Magistrate staying further proceedings had ousted his jurisdiction to continue the proceedings. (Holmwood and Sharfuddin JJ.) Kalanand Singh v. Rameshwar Singh,

8 Ind Cas 892=15 C W N 271=11 Cr L J 729.

——Dispute as to right to use a 'mosque.'

A dispute as to a right to use a 'mosque' by persons claiming to be entitled to officiate as 'Kazis' therein, is a dispute coming within S. 147. (Subramania Ayyar Offg. C. J.) Kadar Batcha v. Kadar Batcha Rowthan,

29 M 237=4 Cr L J 58.

6. Right to user of land or water.
(a) Meaning of.
(b) User of land.
(c) User of water.

6. Right to user of Land or Water—

(a) Meaning of.

——Land or water.

The expression "land or water" as used in S. 147 does not necessarily refer only to private property, though, of course, it does necessarily so refer in sub-s. (1), S. 145. (Curgenven J.) Md. Amirkhan v. Mahalingam Pillai,

A I R 1927 Mad 985=26 M L W 535=1927 M W N 789=39 M L T 448=105 I C 660=9 A I Cr R 144=53 M L J 523=28 Cr L J 948.

——Right to perform 'puja in temple — "Land" meaning of.

The right to perform 'puja' by entering into a certain temple is not a right of use of any land and therefore the dispute relating to the right does not fall within the meaning of S. 147, Criminal P. C. (Semble.) The expression "land" in S. 147, Criminal P. C., does not necessarily include buildings. (Stephen and Carnduff JJ.) Guiram Ghosal v. Lalbehari Das,

37 Cal 578=12 C L J 22=6 Ind Cas 182=14 C W N 611=11 Cr L J 292.

[Overruled in A I R 1951 Cal 93 = 52 Cr L J 940 (FB).]

——Dispute concerning use of land — Meaning—User of land by a person in possession.

The words "a dispute concerning the use of land" in S. 147 are not confined only to cases in which the user of the land, giving rise to the dispute, is by a person not in possession. The expression is wide enough to include a case where the user is by the person in possession. (Subramania Aiyar Offg. C. J. and Sankaran Nair J.) Arunachelam Chettiar v. Chidambaram Chetti,

15 M L J 394=29 M 97=3 Cr L J 31.

6. Right to user of land or water—

(b) User of land.

——Right of user of land—A dispute relating to the right of performance of service in a place of public worship comes within the purview of S. 147. (Vithayathil J.) Kochitti Chacko v. Markose Kathanar Joseph Kathanar,

A I R 1952 T C 531=1952 Ker L T 361=ILR (1952) T C 1016=1953 Cr L J 9.

——Right to worship in a temple : 37 Cal 578=11 Cr L J 292; 38 Cal 387=12 Cr L J 3; A I R 1926 Cal 437=27 Cr L J 239, Overruled.

A dispute as to the right of worship in a temple or other place of worship necessarily involves a dispute as to the right of user of land within the meaning of that term in S. 147, Criminal P. C.: 37 Cal 578=11 Cr L J 292 ; 38 Cal 387=12 Cr L J 3 and A I R 1926 Cal 437=27 Cr L J 239, Overruled. (Harries C. J., Banerjee and Das Gupta JJ.) Dhirendra Nath Das v. Hrishikesh.

A I R 1951 Cal 93 = 55 C W N 594=I L R (1952) 2 Cal 119=52 Cr L J 940 (FB).

CRIMINAL P. C. (V of 1898), S. 147—6. Right to user of land or water—(b) User of land

——Dispute as to right to receive offerings at shrines depending upon right to sit in particular spot—Order can be made either under S. 145 or S. 147, Criminal P. C. (Bose, J.) Abdul Majid Shah v. Mohammad Saheb Aziz-uddin,

A I R 1941 Nag 171=1941 N L J 110=14 R N 37 = 195 I C 122=42 Cr L J 675.

——Dispute regarding right to worship as pujari in temple, whether comes under S. 147.

The policy of the Legislature has been consistently, in the past, to enlarge the jurisdiction of the Magistrate in respect of disputes connected with any kind of user of "land" in its widest sense, and it would be inconvenient if disputes which are really inseparably connected with land or buildings were beyond the jurisdiction of the Magistrate. Where the dispute is regarding a right which is inseparably connected with the use of any land or building, it must be regarded as being within the purview of S. 147, Criminal P. C. A dispute regarding the right to worship as pujari in a temple, in actual fact, may have more to do with what a man does in the temple after entering into it and not so much with his actual entry into temple; nevertheless, where the right regarding which a dispute exists is one which is inseparably connected with the right to enter a building and cannot be dissociated from it, the dispute cannot be said to be not one regarding an alleged right of user of the building. Such a dispute is a dispute regarding any alleged right of user of any land as explained in S. 145, sub-s. 2 and comes within S. 147.

Obiter.—There can be no doubt that a dispute which relates to offerings cannot be regarded as a dispute about the user of any land or building. (Pandrang Row J.) Velappa Goundan v. Ramaswami Goundan,

A I R 1938 Mad 537=47 M L W 305=1933 M W N 348=11 R M 32 = (1938) 1 M L J 817=176 I C 127 = 39 Cr L J 705.

——'Dispute as to possession of temple and right to perform puja—If right to perform puja is not included in the major relief, it is doubtful whether an application under S. 147 can lie merely as to right to perform puja in a certain temple. (Bardswell, J.) Perumal Koman v. Tirumalai,

A I R 1933 Mad 245=(1932) M W N 1079=Ind Rul (1933) Mad 63=37 M L W 143 = 140 I C 900 = 34 Cr L J 88.

——Right to enter samadh land.

The shrines of the followers of the Radhaswami sect known as samadhs are of as great religious sanctity to the followers of that sect as a temple and entry in the compound of the samadh would be covered by the words "right of use of any land." (Dalal, J.) Daya Ram v. Emperor,

A I R 1930 All 452=I R 1930 All 886=127 I C 422= 1930 Cr C 672=31 Cr L J 1217.

——When a site was claimed to be burial ground, Court should see whether the right to bury was exercised at previous occasion when it arose.

In a case where certain persons claim to have a right to bury their dead in a burial ground the Magistrate should address himself to the question whether the persons claiming the right exercised that right when occasion arose. The fact that a portion of the ground was ploughed and sown is no ground for thinking that it is not a burial ground. Vacant portions of a burial ground may be improperly used for raising crops; but that would not take away the right of persons entitled to bury their dead when occasion arises. Section 147 which relates to the exercise of any right of use of any land or water covers

CRIMINAL P. C. (V of 1898), S. 147—6. Right to user of land or water—(b) User of land

cases of this description. (Devadoss, J.) Md. Abdul Kuddus Sahib v. Md. Ashroof Sahib,

A I R 1928 Mad 598=110 I C 100=51 Mad 522=28 M L W 75 = 10 A I Cr R 368 = 1 M Cr C 186 = 55 M L J 40=29 Cr L J 644.

——Allowing procession and prohibition of interference.

Section 147 applies to a case where the question is whether the Hindu community are entitled to use a certain street which is a public street, such user being resisted by the Mahomedans who live in that locality.

An order stating that the Hindus must be allowed to pass through a public street with their procession and that the Muhammadans are prohibited from interfering in any manner with the use by the Hindus of the street, is an order which can be legally passed under S. 147. (Curgenven, J.) Md. Amirkhan v. Mahalingam Pillai,

A I R 1927 Mad 985=26 M L W 535=1927 M W N 789=39 M L T 448=105 I C 660=9 A I Cr R 144=53 M L J 323=28 Cr L J 948.

——A right to take a car in procession along a public road to a temple is a right of user of land which falls within the scope of sub-s. (1) of S. 147. (Fawcett and Madgavkar, JJ.) Basappa Rachappa Belkeri, In re,

A I R 1925 Bom 536=89 I C 846=27 Bom L R 1058 =26 Cr L J 1422.

——Dispute as to—Right to collect tolas from a hat.

A dispute about the rights to collect tolas (gratuities) from a hat is within the above section, the words "concerning the right of use of any land or water" in the section being wide enough for the purpose. (Sanderson, C. J. and Smitther, J.) Sarat Chandra Madak v. Mobarak Mallik,

A I R 1917 Cal 256=24 C L J 437=21 C W N 439= 37 I C 465=18 Cr L J 113.

——Use of public street—Order.

Under S. 147, Cr. P. Code, the Magistrate has jurisdiction to pass orders even against public right of passage through a street provided there is by custom or statute or grant a right in one section of the public to prevent another section from using public street on particular occasions or for particular purposes, when such use is a lawful use. 7 M 49 ; 26 M 554 ; 30 M 185 (P C); 6 M 233; 26 M L J 233, Foll. A Magistrate in passing prohibitory orders under S. 147, Cr. P. Code should not take into account sentimental objections and though he can issue temporary orders under S. 144, Cr. P. Code such orders should not be renewed. 38 M 489, Foll. (Sadasiva Iyer and Phillips, JJ.) Sudaliamuthu Chettiar v. Enan Samban,

A I R 1916 Mad 775=31 I C 367=16 Cr L J 767.

——Procedure—Danger of breach of peace.

The section does not require a Magistrate to record a finding that there is danger of breach of the peace. A right to enter a temple to do puja is a right to immovable property within S. 147; 37 C 578, 38 C 387, Diss. (Kumaraswami Sastri, J.) Chidambara Gurrukkal v. Sengoda Gounden,

A I R 1915 Mad 84=16 M L T 427=27 M L J 587= 25 I C 999=15 Cr L J 671.

[But a finding seems to be necessary, under the new section.]

——Ss. 147 and 133—Fence as an obstruction — Applicability.

Where the obstruction is a flimsy fence, the Magistrate can deal with it under S. 147, and not as a public nuisance under S. 133 of the Cr. P. C. (Sadasiva Aiyar and Spencer, JJ.) Karuppana Kownden v. Kandaswami Kownden,

A I R 1914 Mad 712=15 M L T 230 = 26 M L J 233 =(1914) M W N 394=23 I C 730=15 Cr L J 362.

CRIMINAL P. C. (V of 1898), S. 147— 6. Right of user of land or water—(b) User of land

——'Privy'—If land or water—Use of privy if easement.

A privy is neither 'land' nor 'water' nor is the use of it an easement. Action under S. 147 cannot be taken in respect of it. (Beaman and Roe, JJ.) In re Shankar Sadasiva Katre,

15 Bom L R 329=20 I C 224=14 Cr L J 400.

6. Right of user of land or water—

(c) User of water.

——Ss. 147 and 144—Right to recite sankalpam to person bathing in Pushkarani—If right to water.

A right to recite Sankalpams to such persons as bathe in the holy Pushkarani tirthams will not come under the scope of "a right to water" under S. 147, unless it is claimed as an exclusive right in a person to compel every person bathing in the holy Pushkarani to submit himself to his sankalpam before using its water. A dispute concerning such a right is to be normally fought out in civil Courts by way of restraining others by permanent injunction, or by S. 144, Criminal P. C. proceedings in situation threatening a breach of peace. (Panchapakesa Ayyar J.) Satyanarayana Murthy v. Krishna Ayer

AIR 1950 Mad 593=63 M L W 366 (1)=1950-1 M L J 519=1950 M W N (Cr) 109 (1) =1950 M W N 900=51 Cr L J 1508.

——Dispute as to right of fishing in the sea—Jurisdiction of Magistrate over the sea — Conditions for making an order under S. 147.

The right to fish in the sea cannot form the subject matter of property or be enjoyed as an easement and so no one can by contract or otherwise, relinquish to another his right or any part of it. If any such contract has been made, the Civil Court will not enforce it whatever other remedies may be open to the aggrieved party to the contract.

Where fishing at a particular part of the sea was enjoyed by Muhammadans and Hindus and on the application of the Muhammadans, the Magistrate passed an order under S. 147, Criminal P. C., directing the Hindus to fish only in accordance with the long established custom and understanding between the parties and not to fish at all on Fridays and Muhammadan holidays:

Held, that as there can be no such restrictions on the right to fish in the sea as was set up by the Muhammadans, the latter had no right to restrain the Hindus from fishing in any lawful manner, and that the order passed by the Magistrate was illegal.

In order that an order may be passed under S. 147, Criminal P. C., there must not only be a dispute regarding an alleged right of user of any land or water, but it must also appear to the Magistrate that a legal right exists.

Obiter:—Whether the ordinary criminal jurisdiction of a Magistrate extends only to the water's edge or extends to the sea. (Curgenven and King JJ.) Sethukaruppan Ambalam v. Peer Muhammad Sammatti

AIR 1935 Mad 350=(1935) M W N 181 = 68 M L J 417=41 M L W 436=58 Mad 876 = 8 R M 440 = 159 I C 49=37 Cr L J 4.

——Ss. 145, 147 — Right of one person to catch fish in waters upon the land of another — Dispute in respect of the right—Proceedings under S. 147—Propriety of.

The subject matter of proceedings under S. 147, Criminal P. C., may be fisheries to which one of the parties may have a right apart from any right to the land upon which the fishery stands. The subject-matter of the proceedings under S. 145 if it relates to fisheries, must relate to the particular local area where the fishery extends. The difference is that in the one case, that is, in the case of S. 147, the right may be a prescriptive right or right of easement to use water or land not belonging to the parties but belonging to somebody else which has to be considered.

CRIMINAL P. C. (V of 1898), S. 147 — 6. Right of user of land or water—(c) User of water

Where the right claimed by one party is the right to catch fish in waters upon the land of the other party, it is in the nature of an easement or profits *a prendre* and hence a proceeding in respect of the right comes within ambit of S. 147, Criminal P. C.

In a proceeding under S. 147, the action of the Magistrate in admitting documents after the close of the case without notice to the opposite party and without giving them an opportunity to adduce rebutting evidence is illegal. (Courtney-Terrell C. J. and Kulwant Sahay J.) Ramroop Mahton v. Mano Mian

AIR 1934 Pat 86=6 R P 378=15 P L T 147=13 Pat 153=147 I C 774=35 Cr L J 481.

——Right to use wells.

If the public have from a very long series of years used and have been allowed to use the water of certain wells, whether the wells be public or private, and have been allowed to make use of them as a matter of right and then if certain person claiming ownership forbids the use of the wells, there is every probability of a breach of the peace, and the case is a proper one for enquiry under S. 147. (Pridaux A. J. C.) Parashram v. Gopal Ramchandra

AIR 1924 Nag 294=77 I C 289=25 Cr L J 353.

——Dispute as to user of channel—Declaration of right.

A dispute concerning the right to the use of water from an artificial water channel for the purpose of irrigation, comes within S. 147; and the Magistrate can either direct an obstruction to be removed or direct that an obstruction of dam be constructed as the case may be for the purpose of enabling the party to enjoy the use of water declared in his favour. (Jwala Prasad J.) Manzur Hussain v. Gauri Lal Das

AIR 1919 Pat 174=49 I C 769=20 Cr L J 209.

7. "Easement or otherwise."

——Ss. 147, 146 (1) — Dispute, whether right exists in counter petitioner to take rain water from field of petitioner through bund separating petitioner's field from counter-petitioner's—Magistrate unable to decide one way or other — He should take action under S. 147 and not S. 146 (1).

Where, in case of a dispute whether a right existed in the counter-petitioners to take rain water from the field of the petitioner through the bund separating the petitioner's field from the counter-petitioner's field, the Magistrate is unable to decide one way or the other, he should act under S. 147, Criminal P. C., which deals with disputes with regard to easement and not order attachment under S. 146 (1). (Horwill J.) Chelliah Pillai v. Ramiah Thevar

AIR 1942 Mad 77=14 R M 326=(1941) 2 M L J 375 =54 M L W 314=1942 M W N 424= 196 I C 887=43 Cr L J 103.

——Where the right claimed by one party is the right to catch fish in waters upon land of other party, it is in the nature of an easement or profits *a prendre* and hence a proceeding in respect of the right comes within the ambit of S. 147, Criminal P. C. (Courtney-Terrell C. J. and Kulwant Sahay J.) Ram Roop Mahton v. Mano Mian

AIR 1934 Pat 86 (87, 88) =6 R P 378=15 P L T 147 =13 Pat 153=147 I C 774=35 Cr L J 481.

——Right of entry into temple.

Section 147 applies to disputes as regards entry into a temple or mosque and it would so apply whether the right claimed is an easement or otherwise. A. I. R. 1926 Cal. 437, Dist. (Dalal J.) Daya Ram v. Emperor

AIR 1930 All 452 =I R 1930 All 886= 127 I C 422= 1930 Cr C 672=31 Cr L J 672.

CRIMINAL P. C. (V of 1898), S. 147—7. "Easement or otherwise"

——Personal and public right—Joinder.

If one could prove that a road was a public road either by showing that it had been dedicated to the public or that from time immemorial it had been freely used by the public, no question of easement in favour of a private individual would arise. But, on the other hand, although it might seem not to be possible to put forward such proofs as would show that the road was really a public road it might still be possible to prove that a private individual had acquired an easement and, therefore, there is nothing to prevent a claim of this double nature being made. (Bucknill J.) P. D. Hamir & Co. v. Sureshchandra

AIR 1926 Pat 348=95 I C 761= 1926 P H C C 187= 27 Cr L J 841.

——Easement.

In respect of dispute as to an easement procedure under S. 147 to be followed. (Kotwal A. J. C.) Asaram v. Chotulal

AIR 1921 Nag 100=64 I C 288 =22 Cr L J 768.

——Scope—Natural rights—Infringement.

Section 147, Criminal P. C., is not confined to mere easements. The section applies to other infringments of natural rights relating to the immovable property as well. The order to the police to assist the first party in removing the construction is legal and is within jurisdiction. (Holmwood and Sharfuddin JJ.) Dowlat Koer v. Siva Pershad

10 I C 615=15 C L J 267=12 Cr L J 319.

[This is made clear by the present section—Ed.]

——Form of order—'Easement or otherwise.'

The Court, in passing orders under S. 147, Cri. Pro. Code, should adopt the Form No. 24 in Sch. V of the Cri. Pro. Code. The right of easement contemplated by S. 147 is certainly of a more elastic description than the right which has to be strictly proved in terms of S. 26, Limitation Act. (Caspersz and Ryves JJ.) Srimanta Bera v. Indra Narayan Prodhan

13 C W N 859=3 Ind Cas 468=10 Cr L J 292.

8. Preliminary order.

——S. 147 (1) — No preliminary order — Findings on merits.

Where a petitioner put in a petition requiring formal proceedings to be drawn up under S. 147, but the Magistrate instead of merely declining to draw up proceedings under S. 147 entered into the merits of the controversy without passing a preliminary order and came to certain findings on points which could have been considered only after the proceedings had been initiated :

Held that the order was without jurisdiction. (Ram Labhaya J.) Gobardhandas v. Chaturbhuj,

AIR 1950 Assam 165=I L R (1951) 3 Assam 52.

——Order under.

An order by the City Magistrate under S. 147 (1) directing the opposite parties that they should not take possession of the said land "to the exclusion of the enjoyment of the right of use aforesaid until they shall obtain a clear order of the competent Court adjudging them to be entitled to exclusive possession," at the initial stage cannot be made, though it may be that opposite parties can be directed not to interfere with the exercise of the right claimed by a petitioner pending disposal of the matter before him.

Where the City Magistrate passes the above irregular order and asks the parties to appear before the Additional City Magistrate, and the opposite parties do not go in revision against the order, they cannot challenge the order in revision against the final orders of the Additional City Magistrate, specially when there is nothing to show that the Additional City Magistrate was prejudiced by the irregular order. (Kaul J.) Qamarud-din Husain v. Mushtak Ahmad,

AIR 1949 All 616=50 Cr L J 929.

——City Magistrate—Power to transfer.

Where the City Magistrate drawing up proceedings under S. 147 asks the parties to appear before the Court of the Additional City Magistrate, the order cannot be challenged : AIR 1921 Pat 333; 2 C L J 614, Distinguished; AIR 1923 Pat 366; AIR 1922 All 99 and AIR 1933 All 264 (FB), Ref. (Kaul J.) Qamaruddin Husain v. Mushtaq Ahmad,

AIR 1949 All 616=50 Cr L J 929.

——Amendment of proceedings—Notice.

An amendment in criminal proceedings without notice to the party affected does not bind the party. (Greaves and Panton JJ.) Janaki Nath Kundu Pal v. Monmohan De,

AIR 1925 Cal 263=81 I C 162=25 Cr L J 674.

——Direction to appear before another Magistrate is illegal.

According to S. 147, an order directing the parties to appear before another Magistrate is illegal. (Jwala Prasad J.) Misri Choudhury v. Narasing Prasad,

AIR 1921 Pat 333=2 Pat L T 186 = 62 I C 179=22 Cr L J 483.

9. Parties.

——Proprietor not added.

Order under S. 147 against the gomashta of a proprietor is not illegal, and the omission to add the proprietor as a party to the proceeding is a mere irregularity, or at the most an error of law and does not render the proceedings illegal, especially when the gomashta files written statement on behalf of the proprietor and contests on his behalf. (Kulwant Sahay J.) Chhakauri Lal v. Isher Singh,

AIR 1926 Pat 196 = 91 I C 814 = 6 P L T 799=27 Cr L J 142.

10. Notice.

——Order about rights of parties in certain property, to be binding, must be under S. 147.

Though a Magistrate is entitled to express an opinion on the rights of the parties in the disputed property, yet he is not authorised by any rule of law to pass an order which could be binding upon anybody unless he passed such an order under the provisions of S. 147, Criminal P. C. Such an order passed without notice to one of the parties is not binding on such a party; it is not proper to use official means to enable any party to trespass upon land in the possession of another unless it is decided in the exercise of some jurisdiction that the party who wishes to enter upon the land is entitled to do so. (Allsop J.) Gurmani Saran v. Radha Swami Sat Sang Sabha, Agra,

AIR 1936 All 759=(1936) A L J 1047=1936 A W R (H C) 881=9 R A 303=165 I C 721=38 Cr L J 46.

——Where a Magistrate issues a notice under S. 145, he cannot proceed under S. 147. (Addison J.) Turab Ali Khan v. Shiromani Gurdwara Parbandhak Committee,

AIR 1933 Lah 145 = Ind Rul (1933) Lah 356 = 143 I C 477=34 Cr L J 616.

——Notice under — Magistrate passing orders under S. 145—Legality—See Criminal P. C., S. 145,

9 Cr L J 565 (Mad).

11. Inquiry.

——Section does not authorise Magistrate to permit by interim or interlocutory order, without enquiring, one of petitioners to exercise his right—This cannot also be

CRIMINAL P. C. (V of 1898), S. 147—11. Inquiry

done indirectly by appointing receiver. (Subramania Iyer J.) Eralil Mathai Jacob v. K. Ravivarma,

AIR 1953 Trav-Co 202 = 1953 Ker L T 133=I L R (1953) T-C 73=1953 Cr L J 1013.

——Attachment and appointment of receiver cannot be ordered—Extent of applicability of provisions of S. 145 indicated. (Subramania Iyer J.) Eralil Mathai v. K. Ravivarma,

AIR 1953 Trav-Co 202 = 1953 Ker L T 133=I L R (1953) T-C 73=1953 Cr L J 1013.

——Application—Dismissal for default.

It is not open to a Magistrate enquiring into a case under S. 145 or S. 147 to dismiss in default an application made under that section. (Beg J.) Tahawwar v. State,

AIR 1953 All 440 = 1953 A L J 11 = 1953 A W R (H C) 41=1953 Cr L J 983.

——Dispute concerning right of way — Ad interim order permitting applicant's use of disputed path for limited period and preventing opposite party from interference is illegal : AIR 1932 Nag 83 and AIR 1940 Cal 330, Ref. (Verma C. J.) Bhanwar Singh v. Rama,

AIR 1950 Raj 8=51 Cr L J 807.

——Ss. 147, 146 and 145 — Proceedings under S. 147 — Applicability of S. 146.

Section 146 does not apply to proceedings under S. 147 in which there is no conflict regarding the question of possession. In proceedings under S. 147, therefore, the Magistrate has no jurisdiction to attach the property in dispute and appoint a receiver thereof. (Sen J.) Rahim Baksha v. Abdul Wahed,

ILR (1948) 1 Cal 374.

——S. 147 (2) — Interlocutory order prohibiting interference with existing rights pending decision, legality.

Section 147 (2) contemplates a final order made after due inquiry in the manner provided for by that section and does not justify an interlocutory order prohibiting interference with existing rights pending decision in the matter. (Bartley and Lodge JJ.) Khoda Bux v. Mozaharul Haque,

AIR 1940 Cal 330=43 C W N 623=13 R C 80=189 I C 354=41 Cr L J 728.

——Right of way—Interim order of injunction—Legality.

A claimed that he had acquired a right of way and a right to use the water in a well belonging to B by prescription. The Sub-Divisional Magistrate passed an interim order that B should not interfere with A's rights :

Held, that there being no provision under S. 147, Criminal P. C., to pass such an interlocutory order which, in terms, was nothing short of the final order contemplated by sub-s. (2) of S. 147, the order was illegal and should be set aside. (Subhedar A. J. C.) Ramchandra v. Shankar Rao

AIR 1932 Nag 83 (84)=15 N L J 28=Ind Rul (1932) Nag 71=138 I C 38=33 Cr L J 556

——The words "and shall thereafter inquire into the matter in the manner provided in S. 145" merely mean that after the order in writing has been drawn up as required by the earlier part of the sub-section, the procedure in the inquiry is then to follow the course laid down in S. 145 and it is immaterial whether the enquiry itself was instituted before or after the drawing up by the Magistrate of the order requiring the parties to attend the Court. (Courtney-Terrell, C. J. and Scroope J.) Bhagawan Swain v. Mathuri Swain

AIR 1930 Pat 349 = 1930 Cr C 721 = 125 I C 143= 31 Cr L J 791.

——Enquiry by Magistrate and not by police.

CRIMINAL P. C. (V of 1898), S. 147—11. Inquiry

When an application is made to the Magistrate about an alleged obstruction of a pathway and the Magistrate orders police to enquire and report, that does not constitute institution of the enquiry under the proviso to S. 147. The word "enquiry" in the proviso has reference to the words "enquiry into the matter" in the first paragraph. The enquiry that is contemplated there is enquiry by the Magistrate and not enquiry by the police. Institution of the enquiry into the existence of the likelihood of the breach of the peace must precede the enquiry into the respective rights of the parties and the Magisterial enquiry is instituted when proceedings are drawn up by the Court under S. 147. (Surawardy and Duval JJ.) Ramchandra Acharjee v. Aditya Chandra Pal

AIR 1926 Cal 1051 = 53 Cal 851 = 30 C W N 863= 44 C L J 307 = 97 I C 353 = 27 Cr L J 1089.

——Ex parte evidence of second party — No opportunity to first party.

If Magistrate comes to the conclusion that there is no likelihood of a breach of the peace and therefore no action need be taken either under S. 144 or under S. 147, Criminal P. C., he would be justified in doing so. Where a Magistrate disposes of the matter by taking evidence ex parte by going over to the office of the second party and making enquiries in the absence of the petitioners and without giving them an opportunity of adducing their own evidence and examining witnesses and coming to a distinct finding as to the alleged right of easement set up by the petitioners and comes to the conclusion that the right is with the second party and that if the petitioners go upon the land they do so at their own risk.

Held, in effect, he makes an order in favour of the second party under S. 147 and prevents the petitioners from going upon the land. Such a procedure is wholly unjustifiable and order must be set aside. (Kulwant Sahay J.) Narendra Nath Sarkar v. East Indian Railway

AIR 1924 Pat 717 = 77 I C 807 = 5 P L T 419 = 2 Pat L R Cr 209 = 25 Cr L J 455.

——Finding on evidence — Not vitiated by Local Inspection.

Where in a proceeding under S. 147 a Magistrate stated that he was satisfied from the evidence standing by itself that the conclusions he had come to were right one and that the conclusions were supported by what he had noticed in his local inspection held that an order under S. 147 was rightly passed giving a party a right of way limited by the exclusion of vehicular traffic. A finding as to which party is in possession, though unnecessary under S. 147, does not affect materially proceedings ostensibly taken under S. 147. (Bucknill J.) Muhammad Musa v. Shyam Sunder Koeri

AIR 1921 Pat 227 = (1921) Pat H C C 174 = 2 Pat L T 681 = 64 I C 131 = 22 Cr L J 739.

——Ss. 147 and 146—Enquiry—Procedure—Opportunity to be given to parties to establish case — Order affecting persons and parties —Ultra vires.

An enquiry under S. 147 of the Criminal P. C. has to be made in the manner provided by S. 145 of the Criminal P. C. The Magistrate conducting such enquiry must receive the evidence of the parties. Failure to give an opportunity to the parties of calling evidence affects the jurisdiction of the Magistrate: 48 I. C. 687, Foll. S. 147 of the Criminal P. C. contemplates an order to pass between parties to the proceedings only. An order affecting persons who are not parties to the proceedings is not within the purview of the section and is, therefore liable to be set aside as affecting jurisdiction. (Kotwal A. J. C.) Pilaji v. Darah

AIR 1918 Nag 138 = 48 I C 990 = 20 Cr L J 110.

CRIMINAL P. C. (V of 1898), S. 147—11. Inquiry

——Ss. 147, 148 and 439 — Right of way, dispute as to —Local enquiry, report on—Statements of parties, order on—Jurisdiction.

In proceedings under S. 147 of the Criminal P. C., a First Class Magistrate directed a local enquiry to be held by a Subordinate Magistrate on his report and on the written statements of the parties, who tendered no evidence, he passed an order. Held, that order was not ultra vires as the Court acted on the materials before it (Spencer J.) Muthuswamy Nadan v. Kalinga Mooppan

AIR 1917 Mad 854 = 36 I C 158 = 17 Cr L J 478.

——Court's duty—Order by Magistrate without statutory authority, effect.

An order under S. 147, Criminal P. C. passed by a Magistrate in the absence of any statutory authority justifying it, cannot be supported as an executive order. The authority of every Magistrate to do an act as Magistrate or as Collector is ultimately derived from Parliament: and it is a mistake to assume that because an officer is an Executive Officer or a Judicial Officer, he has any power to interfere with public or private persons, which cannot be derived from a lawful origin. (Lindsay J. C.) Mst. Gouhar v. Emperor

AIR 1914 Oudh 381 = 1 O L J 481 = 25 I C 996 = 17 O C 263 = 15 Cr L J 668

——Inquiry as to possession.

An order of the Magistrate declaring possession to be with a certain party cannot be maintained in the absence of an enquiry as to who was in possession. (Subrahmania Ayyar, Offg. C. J.) Kader Batcha v. Kader Batcha Rowthar

29 Mad 237 = 4 Cr L J 58

12. Exercise of the right.

——Exercise of the right : AIR 1926 Cal 1051, dissented from

The institution of the enquiry in the proviso to sub-s. (2) does not refer to the date of drawing up the order under S. 147, or to the starting of an enquiry as mentioned in S. 145 but relates to the date when the Magistrate is informed about the existing grievance of a certain party about the dispute over a passage or right of way resulting in a likelihood of the breach of the peace : Case law discussed. (H. Deka J.) Chaturbhuj Agarwalla v. Gobardhan Das Khokolia

I L R (1953) 5 Assam 460.

——S. 147 (2)—Right to use plot as burial ground — Proviso to sub-s. (2) if applies.

The right to use a bank of a tank as a burial ground is not exercisable at all times of the year but is one exercisable on certain occasions. Hence, an order under S. 147 in respect of a dispute concerning such a right is not bad merely because the right had not been exercised within the statutory period laid down in the proviso to sub-s. (2). (Roxburgh J.) Gostha Behari Mandal v. Abed Ali

AIR 1950 Cal 425=ILR (1951) 1 Cal 480= 51 Cr L J 1530.

——Where the Magistrate, on a complaint, does not take action under any of the preventive sections of the Criminal P. C. on the ground that it has not been substantiated and consequently dismisses the complaint under S. 203 of the Code, it is not open to him on a further report by the Police to take preventive action under S. 147 when the petitioner is not in possession within three months from the institution of the inquiry. (James and Saunders JJ.) Kinei Majhi v. Gobind Prasad Singh

AIR 1936 Pat 44 = 17 P L T 37=2 B R 240=8 R P 382 = 160 I C 795 = 37 Cr L J 327.

——"Last of such occasions before such inquiry," meaning of.

CRIMINAL P. C. (V of 1898), S. 147 — 12. Exercise of the right

The words "last of such occasions before such inquiry," in S. 147, Criminal P. C., mean last of such occasions on which the right would have been exercisable. (Courtney-Terrell, C. J.) Jadubans Deo v. Pandey Bansidhar.

AIR 1934 Pat 557=7 R P 188=1 B R 46=15 P L T 740=152 I C 295=36 Cr L J 106.

——S. 147 (2), Proviso — Exercise of right prevented by Magisterial order.

There is nothing in the wording of the proviso to S. 147 (2), Criminal P. C., to extend the scope of the proviso to cases where the exercise of the right on the last occasion was prevented by circumstances beyond the control of the parties seeking to exercise the right.

Where the Nadars of a village who claimed rights of thoroughfare were restrained from exercising those rights by Magisterial order in 1928 and 1929 and so could not exercise them for some years and a fresh inquiry was instituted in January, 1931 :

Held, that they are barred by the proviso to S. 147 (2), Criminal P. C., from demanding an enquiry.

"To exercise" means much less than "successfully and completely to assert." A very small gesture on the part of the people obstructed might be counted as "exercise." (Jackson J.) Vellayan Chetty v. Balkrishna Nadar.

A I R 1931 Mad 495=(1931) M W N 555=133 I C 5=Ind Rul (1931) Mad 693=32 Cr L J 972.

——Magistrate need not find that easement is established.

As to the right of the person to the flow of water down a channel, it is not necessary for the Magistrate to find that a right of easement strictly so-called is established. All that he has to find is that the person has been for long time using the water flowing down the channel and has in fact used it during the last season. (Pandalai J.) (Kanta) Venkanna v. (Inuganti) Venkata Surya Neeladri,

A I R 1930 Mad 865=129 I C 68=32 M L W 175= 1930 M W N 987=1930 Cr C 1171=59 M L J 430=32 Cr L J 215.

——Three months are not the three months prior to order, but three months next before the institution of the inquiry. (Dalal J.) Dayaram v. Emperor,

AIR 1930 All 452=ILR 1930 All 886=127 I C 422= 1930 Cr C 672=31 Cr L J 1217.

——Institution of inquiry.

The words "institution of inquiry" in the proviso to Cl. 2, S. 147 does not mean the date of the drawing up of the formal proceedings under S. 147, but it means the date on which the complainant first brings his grievance to the notice of the Magistrate either directly or indirectly through the police, and the Magistrate takes action with a view to enquiring into the allegation, although that action is merely a preliminary to the eventual institution of a formal proceeding. Hence the period of three months is to be calculated from the date, the complainant first approaches the Magistrate and not from the date of institution of formal proceedings. 44 C. L. J. 214, Foll. (Courtney-Terrell C. J. and Scroope, J.) Bhagawan Swain v. Mathuri Swain,

AIR 1930 Pat 349=1930 Cr C 721=125 I C 143 = 31 Cr L J 791.

——"Inquiry."

The inquiry contemplated by the proviso to sub-s. (2) is the inquiry referred to in sub-s. (1). A I R 1926 Cal 1051, Foll. (Wort J.) Sohan Lohar v. Jitu Upadhya

AIR 1930 Pat 291=122 I C 145=1930 Cr C 608 = 31 Cr L J 361.

——Institution of enquiry.

The expression "institution of the inquiry" in S. 147, Criminal P. C., does not mean the date when the formal

CRIMINAL P. C. (V of 1898), S. 147 — 12. Exercise of the right

proceedings are drawn up under the section. So where the complaint was lodged on 24th April 1919 praying for an order under S. 147, Criminal P. C., and the Magistrate passed an order on 19th May 1919 calling on the other side to show cause and also calling for a report and the proceedings were drawn up on a perusal of the report and subsequently the case was transferred to the Deputy Magistrate on the 16th June 1919 and the case was disposed of on the 8th of July 1919. Held, that on those facts the inquiry was instituted at the latest on the 6th May 1919 and that the proceeding was not vitiated by the three months' bar contained in the proviso to S. 147 Criminal P. C. (Shamsul Huda and C. C. Ghose JJ.) Rama Nath Basu Choudhury v. Sarada Prosad Basu Choudhury,

99 I C 33=44 C L J 214=28 Cr L J 2.

——General user.

No specific instance of user need be proved within three months. Continuous general user up to the date of obstruction is sufficient. (Bucknill J.) P. D. Hamir & Co. v. Suresh Chandra,

AIR 1926 Pat 348=1926 P H C C 187=95 I C 761=27 Cr L J 841.

——Impossibility.

Where the non-exercise of the right within the proper period is due to circumstances beyond the control of the person claiming the right, the proviso to S. 147 (2) does not apply. Where the right was not exercised in the proper season due to the obstruction of the opponents of the party claiming the right and to the latter resorting to the assistance of the Magistrate.

Held, that the proviso to sub-s. (2) did not apply. (Fawcett and Madgavkar JJ.) Basappa Rachappa Balkeri, In re,

AIR 1925 Bom 536=27 Bom L R 1058 = 89 I C 846 =26 Cr L J 1422.

——Exercise of right—Finding necessary.

In the absence of a finding that the right has been exercised within the periods specified by S. 147 the final order under S. 147 cannot be maintained. 2 Pat L T 364, Foll. (Kulwant Sahay J.) Sirkawal Singh v. Bhuja Singh,

AIR 1924 Pat 784=81 I C 708=5 P L T 457=25 Cr L J 996.

——Order under, when to be made.

A Magistrate cannot pass an order under S. 147 without coming to a clear finding that the party in whose favour the order is made exercised the rights in dispute within three months next before the institution of the inquiry or during the last season or occasion before its institution, if the right is exercisable at particular seasons or occasions. (Jwala Prasad J.) Mr. Grant v. Padarath Jha

AIR 1921 Pat 486=2 P L T 364=61 I C 847=22 Cr L J 463.

——Jurisdiction—Exercise of right within three months.

To vest a Court with jurisdiction under S. 147 it must appear that where the right to do such thing is exercisable at all times of the year, the right has been exercised within three months next before the institution of the enquiry or where it is exercisable only on particular seasons or on particular occasions, the right has been exercised only during the last of such seasons. 19 I C 959, Rel. 5 C W N 67, Dist. (Das J.) Babu Khan v. Raj Kishore Pershad,

AIR 1919 Pat 477=51 I C 846=20 Cr L J 558.

——Dispute concerning easement—Order.

An order under S. 147 is illegal if it is made in the absence of any finding that the right was exercised within

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three months prior to inquiry. (Harington and Coxe JJ.) Guriv Prasad Dhar v. Laxman,

19 I C 959=14 Cr L J 303 (Cal).

13. Order prohibiting interference.

——Proceedings under, in respect of pathway, by defendants—Plaintiffs putting up fence pending proceedings—Order in favour of defendants—Removal of fence — Suit under S. 9, Specific Relief Act—Maintainability.

The defendants started proceedings under S. 147, Criminal P. C., their case being that they had a right of way over the lands in suit and the plaintiffs were attempting to obstruct the pathway. At the date when this proceeding was started, there were no obstructions but during the pendency of the proceedings, the plaintiffs fenced the lands. The proceedings under S. 147, Criminal P. C., terminated in favour of the defendants. The order was in terms of S. 147 (2), that is, the plaintiffs were prohibited from interfering with exercise of the right of the defendants to use the land as a pathway. The defendants removed the fencing and began to exercise their right of way. On January 9, 1933, a suit under S. 9, Specific Relief Act, was filed :

Held, that the plaintiff's suit under S. 9, Specific Relief Act, was not entertainable and that the act of the defendants in passing over the lands did not amount to dispossession within the meaning of S. 9, Specific Relief Act. The plaintiffs had not been turned out and they could use the land in any beneficial way they liked provided they did not interfere with the reasonable use of the same by the defendants, as a pathway. The plaintiffs had misconceived their remedy and if they felt aggrieved by the order passed by the Magistrate under S. 147 (2), Criminal P. C., their relief lay in instituting a regular suit. (Mitter J.) Jogendra Chandra Das v. Birendra Lal Das

AIR 1935 Cal 454=39 C W N 394=61 C L J 307=8 R C 43=156 I C 924.

——Order under S. 147 prohibiting taking possession until right is declared by Civil Court—Suit brought more than six years of order :

Held, that the suit was governed by Art. 120 of Limitation Act and the suit was barred. (Curgenven and King JJ.) Ponnu Nadar v. Kumaru Reddiar,

AIR 1935 Mad 967=(1935) M W N 634=42 M L W 599=69 M L J 739=59 Mad 75=8 R M 837 = 161 I C 653.

——S. 147 (2)—Final order—Whether should be in exactly the same words as are used in the section.

Where it appeared that, by reason of a wall erected by the accused, an obstruction to the complainants was caused :

Held, that an order directing removal of the obstruction, though not exactly in terms of S. 147 (2), Criminal P. C., was valid.

It is impossible to lay down a hard and fast rule that in every case, the final order of the Magistrate should be in exactly the same words as are used in the section. Each case must depend upon its own facts. (C. C. Ghose, Actg. C. J. and Mallik J.) Khajer Naskar v. Tabrej Ali Naskar,

A I R 1933 Cal 752 (1) (752)=6 R C 190 (1)=146 I C 223 = 34 Cr L J 1230.

——Where the Magistrate passes under S. 147 an order prohibiting the counter-petitioners from putting up any bunds across a channel in their field, and from interfering with the petitioners removing the obstructions already put up, the order requires to be amended by omitting the words "from interfering with the petitioners removing the obstructions already put up" and substituting

CRIMINAL P. C. (V of 1898), S. 147 — 13. Order prohibiting interference

therefor the words "from retaining any obstruction to the petitioners' use of the water flowing along the channel in their field," inasmuch as such an order is likely to cause a recurrence of breach of the peace, which such orders are intended to prevent, but the Magistrate is competent to pass an order in the amended form, even under S. 147 as amended in 1923. A. I. R. 1925 Cal. 991, Not foll.; 26 I. C. 730, Appl. (Pandalai J.) Kanta Venkanna v. (Inuganti) Venkata Surva Neeladri Rao,

A I R 1930 Mad 865=129 I C 68=32 M L W 175=1930 M W N 987=1930 Cr C 1121=59 M L J 430=32 Cr L J 215.

——Bona fide claim of right.

The provisions of S. 147 are of an emergency nature and are conducted more or less summarily. It the Magistrate, as the result of hearing the evidence, thinks that reasonable grounds have been shown to him that a bona fide claim of right exists, then he is justified in passing such order as he may think fit. It is not expected that he should usurp the functions of the Civil Court or that the enquiry under S. 147 should be a formal trial of the matter in issue. The actual rights of the parties must await determination in a civil suit. The words "such right exists" must be understood to mean such rights as are claimed. (Bucknill J.) P. D. Amir & Co. v. Sureshchandra,

A I R 1926 Pat 348=1926 P H C C 187=95 I C 761=27 Cr L J 841.

——Jurisdiction—When an order can be passed.

A Magistrate can pass an order under S. 147 of the Cr. P. C., if he considers that on the date of the order there is a likelihood of a breach of peace. An order under S. 147 of the Code can be made even when the right claimed is a right to a private path. (Sadashiva Aiyar and Spencer JJ.) Karuppanna Kounden v. Kandaswami Kounden,

A I R 1914 Mad 712=15 M L T 230=26 M L J 233=(1914) M W N 394=23 I C 730=15 Cr L J 362.

——Direction to Police to assist party removing obstruction.

A Magistrate has power to invoke the aid of the Police to carry out an order made by him under S. 147 (Holmwood and Sharfuddin JJ.) Ambika Prosad Singh v. Gursahai Singh,

39 Cal 560=13 I C 1000=13 Cr L J 184.

——Interference with exercise of a right—Order of Magistrate forbidding interference—Jurisdiction.

Where the Hindus prevented the Christians from exercising their right to take water from a well : Held, that there was nothing in S. 147 to prevent the Magistrate from passing an order forbidding the Hindus from interfering with the exercise of that right. (Benson and Sankaran Nair JJ.) Hindus of Kannampalaiyam Village v. Kai Kola Christians,

8 Ind Cas 848=(1911) M W N 44=9 M L T 209=21 M L J 486=11 Cr L J 721 (2).

——Order under—Execution of through police—Legality.

There is nothing in S. 147, Criminal P. C., to indicate that the Magistrate can carry out an order under the section through the agency of the police. The section clearly contemplates orders directed to the persons who are parties to the dispute. (Caspersz and Ryves JJ.) Dalmir Puri v. Khodadad Khan,

36 C 923 = 14 C W N 179=4 Ind Cas 415=10 Cr L J 579.

14. Mandatory injunction or positive order.

——Order for removal of obstruction — Interpretation of Statutes. A. I. R. 1947 All 302=48 Cr L J 1, OVERRULED.

CRIMINAL P. C. (V of 1898), S. 147—14. Mandatory injunction or positive order

A power to effectuate a certain object which the legislature has in view must be construed as implying the existence of all such ancillary powers as are necessary for carrying out the intention of the Legislature and effectuating the object in view. No doubt, under S. 147 the jurisdiction of a Magistrate is confined only to the passing of prohibitory orders which are generally in a negative form and he has no power to issue every kind of positive orders to secure the exercise of the right of user by one party. But in order to make a prohibitory order effective, the Magistrate has power to pass an order for the removal of an obstruction, if without its removal the prohibitory order cannot be effectively enforced. In passing such orders, the Magistrates must, however, bear in mind that their jurisdiction under S. 147 is confined only to preventing breach of the peace and they are not expected to hold complicated enquiries as to title and try to adjust the same. Their orders are intended to be only of a temporary nature till the rights of the parties are finally determined by competent Courts : A. I. R. 1947 All. 302 : 48 Cr. L. J. 1, OVERRULED. (Malik C. J., Agarwala and Mushtaq Ahmad JJ.) Abdul Wahab Khan v. Mohd. Hamid Ullah,

A I R 1951 All 238=1951 A L J 400=1951 All W R (HC) 364=1951 All Cr R 67=1951 R D (HC) 63=I L R (1953) 2 All 664=52 Cr L J 795.

——Mandatory injunction.

Under S. 147, a Magistrate has no power to make an order in the nature of a mandatory injunction. All that he can do is to make an order prohibiting any interference with the right of way, if in his opinion it existed. A. I. R. 1938 Nag 297 and A. I. R. 1942 Cal. 244 (F.B.), Rel. on. (Hemeon J.) Emperor v. Abdullah,

AIR 1949 Nag 275=1949 N L J 40=I L R (1949) Nag 388=50 Cr L J 693.

——S. 147 (2)—Mandatory injunction, if can be issued—Order directing demolition of building or construction, if can be passed.

When the exercise of the alleged right has been totally prevented, no question of a breach of the peace in consequence of the exercise of that right can possibly arise and in such circumstances, it is not within the jurisdiction of a Magistrate under S. 147 (2) to pass an order to the effect that the permanent obstruction should be removed. Hence S. 147 (2) does not empower a Magistrate to issue a mandatory injunction or to pass an order directing the demolition of a building or construction which has already been made : I. L. R. (1942) 2 Cal 75 and A. I. R. 1938 Nag. 297, Rel. on; A. I. R. 1930 Mad. 865; A. I. R. 1941 Mad. 752; A. I. R. 1941 Lah. 210 and A. I. R. 1940 Cal. 545 Not foll. (Mulla and York JJ.) Ram Chand v. Emperor,

AIR 1947 All 302=228 I C 8=1947 A L J 5=I L R (1947) All 287 = 1947 A W R H C 7 (2) = 1947 O A Rev. B 12=48 Cr L J 1.

[Overruled in AIR 1951 All 238=52 Cr L J 795 (FB).]

——S. 147 (2) — Whether gives power to Magistrate to issue mandatory injunction directing the removal of existing obstruction. A. I. R. 1940 Cal. 545=42 Cr. L. J. 94; A. I. R. 1933 Cal. 752 (1)=34 Cr. L. J. 1230, OVERRULED.

A Magistrate, acting under the powers conferred by sub-s. (2) of S. 147, Criminal P. C., has no power to issue a mandatory injunction directing the removal of an existing obstruction. It is one thing to make an order prohibiting the doing of an act; it is another to order the doing of an act. The sub-section allows the former, but it does not allow the latter. A. I. R. 1940 Cal. 545 : 42 Cr L J 94; A. I. R. 1933 Cal. 752 (1) : 34 Cr. L. J. 1230, OVER-

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RULED. (Derbyshire C. J., Bartley, Nasim Ali, Lodge and Pal JJ.) Hem Chandra v. Abdur Rahman,

AIR 1942 Cal 244=14 R C 535=46 C W N 452=75 C L J 100=I L R (1942) 2 Cal 75=199 I C 297 (FB).

——Further direction that petitioner should not cause obstruction to flow of water from tank which would cause submersion of and damage to crop of opposite party, held beyond scope of S. 147.

Held, that though it was open to the Magistrate under S. 147, Criminal P. C., to direct the petitioner to remove the dam put up by them on the surplus weir of the tank, a further direction that he should not cause any obstruction to the flow of water from the tank which would cause the submersion of and damage to the crops of the opposite party is beyond the scope of S. 147. (Lakshmanarao J.) Thoongawedan v. Perumal Goundan,

AIR 1941 Mad 752=14 R M 240=1941 M W N 481 =195 I C 606=42 Cr L J 780.

——S. 147 (2)—Power of Magistrate to direct mandatory injunction.

Section 147 (2), Criminal P. C., empowers the Magistrate, in a proper case, to order a person to do something or, in other words, to direct a mandatory injunction. (Skemp J.) Ghumanda Singh v. Emperor,

A I R 1941 Lah 210=43 P L R 166=14 R L 27=195 I C 10=42 Cr L J 651.

——S. 147 (2)—Object — S. 147 (2) in proper case covers power to direct mandatory injunction — It also confers upon Magistrate discretion as to nature of prohibitive order.

On the analogy of S. 145 of the Code, the obvious intention of the Legislature was to allow the free exercise of the right which had been established in the summary proceeding under S. 147 until the final rights of the contending parties had been ultimately decided in the Civil Court. It would be impossible to give effect to this intention in many cases without issuing some order of a mandatory nature. Section 147 (2) does in a proper case cover the power to order a person to do something or in other words the power to direct a mandatory injunction. The language of S. 147 (2) is sufficiently wide to confer a discretion upon the Magistrate as to the nature of the order that he may make in prohibiting any interference with the right of the successful party. Consequently, where a person establishes his right of way over a path way in proceedings under S. 147 (2), the Magistrate has power to order the opposite party to remove the fencing put up by them for obstructing the right of way. A I R 1925 Cal 991 ; A I R 1934 Cal 556 and A I R 1937 Cal 513, Not approved; A I R 1930 Mad 865 and A I R 1933 Cal 752, Rel. on; 28 Cal 734; 5 C W N 335 and 39 Cal 560, Approved. (Khundkar and Edgley JJ.) Badridas Agarwalla v. Sohan Lal Oswal,

A I R 1940 Cal 545 : I L R (1940) 1 Cal 468 : 42 Cr L J 94.

[Overruled in A I R 1942 Cal 244 (F B).]

——S. 147 (2)—Order in nature of mandatory injunction cannot be passed under S. 147.

The Magistrate has no power under S. 147, Criminal P. C., to make an order in the nature of a mandatory injunction. (Gruer J.) Usman Ali Mohmad Ali v. Emperor,

A I R 1938 Nag 297=10 R N 440 = 1938 N L J 139 =I L R (1938) Nag 580=175 I C 234 = 39 Cr L J 534.

——S. 147 (2) — Magistrate directing person not to obstruct drain—Mandatory injunction to remove wall, if can be issued.

Magistrate acting under S. 147, Criminal P. C., and directing a person not to obstruct a certain drain cannot

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add to the order a mandatory injunction directing him to remove the wall which he had already constructed.

Similarly, the Magistrate, instead of basing his order under S. 147 upon the alleged right, cannot base it upon some imaginary right. (Derbyshire, C. J. and Henderson, J.) Haradhona Mukerjee v. Brojendra Nath,

A I R 1937 Cal 513 = 10 R C 261=41 C W N 900 = 171 I C 268=38 Cr L J 1071.

——Mandatory order.

No mandatory order for the removal of a fence can be passed under S. 147, Criminal P. C. (Mitter, J.) Jogendra Chandra Das v. Birendra Lal Das,

A I R 1935 Cal 454 = 39 C W N 394=8 R C 43=61 C L J 307=156 I C 924.

——S. 147 (2) contemplates only a prohibitory order.

The words used in sub-s. (2), S. 147, Criminal P. C., contemplate only a prohibitory order and not a mandatory order to do some positive act. (Guha and Nasim Ali, JJ.) Tarini Mohan De v. Dwarka Nath Banikya,

A I R 1934 Cal 556=38 C W N 476=7 R C 30=150 I C 600=35 Cr L J 1093.

——S. 147 (2) — Final order need not be in all cases exactly in terms of the section.

It is impossible to lay down a hard and fast rule, that in every case the final order of the Magistrate should be in exactly the same words as are used in the section. Each case must depend upon its own facts.

Where it was found that by reason of the erection of a wall, an obstruction to the right of the complainant was caused :

Held that an order directing removal of the obstruction, though not exactly in terms of S. 147 (2), was valid. (C. C. Ghose, Ag. C. J. and Mallik, J.) Khajer Naskara v. Tabrej Ali Naskar,

A I R 1933 Cal 752 (1)=146 I C 223=34 Cr L J 1230.

[Overruled in A I R 1942 Cal 244 (F B)].

——What may not amount to.

Under Cl. 2 it is clear that where a right exists the Magistrate may make an order prohibiting any interference with its exercise. Where there is a right to the water coming through a pyne and it is indispensable to the exercise of that right, that a cutting in the bank should be closed it is merely a matter ancillary to the declaration of the right to the water and if the first party are to be prohibited from interfering with the exercise of this right to the water on the part of the second party, this can only be done effectively by restraining them from preventing the second party from closing this cutting in the bank. There is nothing in the proviso against passing of an order of this kind as it is in no sense a mandatory injunction. (Ross, J.) Ram Dhan Puri v. Barhamdeo,

A I R 1929 Pat 351=121 I C 461=10 Pat L T 376= 1929 Cr C 153=31 Cr L J 247.

——No power to issue.

The words of sub-s. (2) do not give the Magistrate any power of directing one of the parties to do a positive act by way of mandatory injunction such as demolishing a wall built by him. The power given to a Magistrate under that sub-section is analogous to the power of a Civil Court to grant a temporary injunction restraining a person from doing a certain Act. (Newbould and B. B. Ghose, JJ.) Hari Mati Dasi v. Haridasi Dasi,

A I R 1925 Cal 991=88 I C 1041 = 41 C L J 568=30 C W N 238=26 Cr L J 1265.

15. Order prohibiting exercise of right.

——S. 147 (3) — Scope — Order restraining parties from using water from water-course — Order, if within sub-section.

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Where the Magistrate, not being satisfied from the evidence that an exclusive right to take water from a water-course existed in favour of either of the parties, confirmed his previous order of attachment and restrained both the parties from making use of the water from the water-course, so long as the rights of the parties were not determined by a competent Court:

Held, that though S. 146 was probably not applicable to a dispute relating to a right of user of immovable property, the order could be interpreted as one prohibiting any exercise of the alleged right under S. 147. (Malik J.) Chandra Ballabh v. Emperor,

A I R 1948 All 105=1947 A W R H C 294 (2)=1947 A L J 532=I L R (1947) All 746=49 Cr L J 48 (2).

——Ss. 147 and 438—Petition under S. 147—Magistrate issuing warning to counter-petitioners not to create breach of peace by reciting sankalapam at certain tank without taking evidence — Sessions Judge setting aside order in revision — Orders of both Magistrate and Sessions Judge, held were without jurisdiction.

Where, on a petition under S. 147, the Magistrate, instead of taking evidence and going into the matter, directed the Police to warn the counter-petitioners not to create a breach of the peace by reciting sankalpams at a tank, and the order was set aside in revision by the Sessions Judge :

Held, that the Magistrate had no jurisdiction to issue a warning without taking evidence and deciding whether such a right was there or not and that the Sessions Judge had also no jurisdiction to sit in revision over such an order and pass an order himself; if the order of the Magistrate was wrong, the Sessions Judge should have reported the matter to the High Court for interference. (Kuppuswami Aiyar J.) Satyanarayana Sastri, In re,

A I R 1946 Mad 412 = 59 M L W 301 = (1946) 1 M L J 458=1946 M W N 345 = I L R (1947) Mad 154 =47 Cr L J 872.

——Proceedings under S. 147 regarding dispute as to road—Order in form under S. 145 (6) :

Held, there was no prejudice to opposite party. (Agarwala, J.) Dhansar Coal Co. v. Babu Lal Agarwala,

A I R 1938 Pat 133 = 4 B R 329 = 10 R P 436 = 19 P L T 323=173 I C 750=39 Cr L J 863 (2).

——Procession to pass through public streets—Section 147 does not apply to prohibit use of streets. (King, J.) Kamatchi Nadar v. D. Mudaliar,

1936 M W N 494.

——An order under S. 147 (3) is to be made only in those cases in which it is shown that no right of way exists. (Wort, J.) Sohan Lohar v. Jiut Upadhya,

A I R 1930 Pat 291 = 122 I C 145=1930 Cr C 603= 31 Cr L J 361.

——The mere fact that the Magistrate cannot pass an order in favour of the petitioners under sub-s. (2) is no reason for passing an order in favour of the opponents, prohibiting the petitioners from any exercise of their alleged right. That is an order under sub-s. (3) which he could only pass if it appears to him that the petitioners' right does not exist. The mere fact that they did not exercise the right during the preceding year is not sufficient to show that the right does not exist, and it only prevents the Magistrate from issuing an order under sub-s. (2) supporting the alleged right. (Fawcett and Madgavkar JJ.) Basappa Rachappa Belkari, In re,

A I R 1925 Bom 536=89 I C 846=37 Bom L R 1058 =26 Cr L J 1422

——Easement—Magistrate to pass prohibitory order.

In a proceeding under S. 147, Cr. P. Code, the first party claimed a right of passage over certain land which the other party denied. The Magistrate found that the right of easement claimed by the first party did not exist. Held, that the Magistrate had jurisdiction to pass an order directing that the first party shall not use the right of passage unless he obtained the decision of a competent Court adjudging to use it. (Richardson and Huda JJ.) Pyari Moan Shaha v. Harish Chandra Shaha,

A I R 1919 Cal 207=23 C W N 956=49 I C 923=20 Cr L J 251.

16. Decision of a Civil Court.

——Ss. 147 and 145—Nature of proceeding under S. 147.

A proceeding under S. 147 is a quasi civil proceeding. If, therefore, the question at issue between the parties has already been the subject-matter of a suit in the Civil Court, the trying Magistrate has no jurisdiction to institute the proceeding. (Shearer J.) Hitlal Mahton v. Bhikhari Mahton

A I R 1952 Pat 251 = 1953 B L J R 198 = 1952 Cr L J 765.

——No order should be passed where injunction is issued by the Civil Court. (Bardswell J.) Muthukumara Chettiar v. Muttiah Konar

1934 M W N 735.

——Possession granted by Rent Court—Duty of Criminal Court to protect the possession.

It is the duty of the Criminal Court to protect possession which has been given to a person by a Rent Court whether the possession is symbolical or actual physical possession. (James J.) Chandran v. Emperor

A I R 1933 Pat 194 = Ind Rul (1933) Pat 224 = 14 P L T 570=144 I C 241=34 Cr L J 728.

——Matter already decided.

If the matter which is in dispute under S. 147 has actually been adjudicated upon by a Civil Court then a Magistrate has no jurisdiction to enquire into a claim which is entirely contrary to that Court's decree. 11 Bom 584, Appl. (Fawcett and Patkar JJ.) Anya Shedya Patil, In re

AIR 1937 Bom 654=102 I C 546=29 Bom L R 715= 28 A I Cr R 233=28 Cr L I 578.

17. Conversion of proceedings.

——Conversion of proceeding under S. 133 into one under S. 147. See ibid, S. 133,

A I R 1950 Pat 315=51 Cr L I 1188.

——Applicability.

Where S. 145, Criminal P. C., does not apply, S. 147 may, and proceedings under the latter section are carried on in the same manner as proceedings under the former. (Dhavle J.) Kunjo Mandal v. Sarju Ram,

A I R 1939 Pat 206 = 20 P L T 164=5 B R 539=11 R P 573=181 I C 176=40 Cr L J 538.

——Ss. 147, 145 — Fact that wrong section is quoted, if alters real character of proceedings.

Where the initial notice, the written statements and the subsequent proceedings, including the operative order under S. 145 are all substantially covered by S. 147, Criminal P. C., the fact that a wrong section, viz., S. 145, has been quoted, will not alter the real character of the proceedings. (Niamat Ullah J.) Gajraj Singh v. Emperor,

A I R 1936 All 320=8 R A 900=1936 A W R (HC) 529=(1936) A L J 746=162 I C 760=37 Cr L J 705.

——Conversion of proceedings under S. 145 into one under S. 147.

Where proceedings are instituted under S. 145 on the basis of a police report which states that there is an imminent risk of a breach of the peace, but the Magistrate afterwards discovers that the question of issue is not one of possession under S. 145, but is one as to rights falling

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under S. 147, he can convert the proceedings into proceedings under S. 147. (Greaves and Panton JJ.) Anath Bandhu Nundy v. Wahid Ali Pramanik,

A I R 1925 Cal 1022=85 I C 654=26 Cr L J 558.

18. Dropping and revival of proceedings.

——Proceedings under—Stay—Revival.

The Magistrate is competent to pass an order staying or dropping the proceedings under S. 147 before him on the ground that a civil suit had been instituted and that there was no likelihood of breach of the peace after the institution of the civil suit and the Sub-Divisional Magistrate has no jurisdiction to revive such proceedings subsequently. (Narayan J.) Bankim Chandra v. Ramkrishna Singh

A I R 1951 Pat 479=52 Cr L J 651.

19. Costs.

See also under S. 148 (3).

——No order as to costs made in decision under S. 147—Subsequent order for costs cannot be made.

Where no order as to costs was made in the decision under S. 147, Criminal P. C., the award of costs by a subsequent order cannot be made. (Lakshmanarao J.) Thoonga Vedan v. Perumal Goundan

A I R 1941 Mad 374=13 R M 768 = (1941) 1 M L J 43=53 M L W 66=1941 M W N 63=194 I C 32 = 42 Cr L J 518.

——Order for costs — Magistrate competent to pass the order — Proper time at which order is to be made — See ibid, S. 148,

11 Cr L J 335 (Oudh).

20. Revision.

——Finding that there existed danger of breach of peace —Nature of —Existence of evidence though meagre to arrive at the finding—Interference—See ibid, S. 439,

A I R 1949 All 616=50 Cr L J 929.

——With the deletion in 1923 of sub-s. (3) of S. 435, Criminal P. C., High Court has full revisional power over proceedings under Ss. 145 and 147. (Dhavle J.) Kunjo Mandal v. Sarju Ram Marwari,

A I R 1939 Pat 206=11 R P 573 = 20 P L T 164=5 B R 539=181 I C 176=40 Cr L J 538.

——Finding of fact.

Finding of fact under S. 147 cannot be traversed by revisional proceedings, and as indicated by sub-s. (4) the aggrieved party should seek his remedy in the Civil Court. (Jackson J.) Khazi Mahomed Khan, In re,

A I R 1926 Mad 154 (1)=22 M L W 831.

——Magistrate's power.

Where the contention on behalf of the petitioners is that the order in favour of the opposite party in respect of a right to fish in water lying over the occupancy holdings of the petitioners is without jurisdiction inasmuch as an order can only be made under S. 147 if it appears to the Magistrate that the right to the use of land or water exists but the Magistrate himself gave a finding of fact to that effect himself, relying on the written statement. Where there is an allegation that the right is the sole right of the Pipra concern, who have been exercising and enjoying it ever since the grant of the mokarari right to them by the Bettiah Raj: — Held although this is not an explicit pleading of an acquisition of the right by adverse possession it is sufficient to let in the evidence on which that finding has been arrived at. (Rose J.) Bandh Rai v. T. B. Norman,

A I R 1922 Pat 214.

——Ss. 147 and 148—Receiving evidence—Delegation to Subordinate Magistrate.

The High Court does not interfere under S. 15 of the Charter Act, with orders under S. 147, Criminal P. C., unless such orders were passed without jurisdiction. Per Ayling J. — Where a first class Magistrate acts on evidence recorded by the Magistrate deputed to make the enquiry without objection by the parties and bases his evidence thereon, the order is not one passed without jurisdiction and the High Court will not interfere : 31 Mad 82, Dist. Per Seshagiri Iyer J. — Where the First Class Magistrate acts upon evidence taken by Subordinate Magistrate, the former acts without jurisdiction, but the defect is cured by S. 537 where the parties do not object and are not prejudiced thereby. (Ayling and Seshagiri Iyer JJ.) Muthuswami Nadan v. Kalianga Moopan,

AIR 1918 Mad 791 = 33 M L J 78 = 40 I C 715=18 Cr L J 715.

——Ss. 147, 439—Order under when without jurisdiction.

Where without issuing a notice of the proceedings under the section and when it was not shown that the person in whose favour the order works exercised a right over the land in question within the next three months prior to the institution of the enquiry the Magistrate directed a person to remove the obstruction.

Held that the Magistrate acted with grave irregularity in the exercise of jurisdiction and that the High Court had power under S. 439 to interfere in revision. (Shah Din J.) Bhana v. Crown,

105 P L R 1909=12 P R 1909, Cr = 11 P W R 1909, Cr=4 Ind Cas 860=11 Cr L J 51.

——Ss. 147, 439 — Tenant enclosing agricultural land with a wall—Nature of dispute—Power of Magistrate.

The enclosing by a tenant of agricultural land, in his possession, with a wall instead of a hedge, does not prima facie interfere with the landlord's right. The High Court ought not to interfere in revision in such a case as the dispute is really a civil suit between the parties, which ought to be settled by a Civil Court. But, it would be proper for the Magistrate to take security from the party from whom a breach of the peace is apprehended, though it is not illegal for the Magistrate to act under S. 147. (Subrahmania Aiyar, Offg. C. J., and Sankaran Nair, J.) Arunachellam Chettiar v. Chidambaram Chetti,

29 Mad 97=16 M L J 394=3 Cr L J 31.

—S. 148.

See also ibid, S. 145.

SYNOPSIS

1. Amount of costs.
2. Applicability and scope.
3. Costs — Sub-section (3).
4. For and against whom cost can be ordered.
5. "Local inquiry" — Meaning of.
6. Notice.
7. Recovery of costs.
8. Revision.
9. When order for costs should be made.
10. Who can hold the enquiry.

1. Amount of costs.

——Actually incurred.

The Magistrate can award costs to the successful party but such costs must be based on proper materials, namely, the actual costs incurred as pleader's fees and costs of witnesses : 1 P L T 369, Foll. (Fazl Ali J.) Manglu Sahu v. Ramdhani Tomboli,

AIR 1929 Pat 93 = 9 P L T 835 = 114 I C 193=12 A I Cr R 212=30 Cr L J 252.

——S. 145 (3)—Additional costs.

Additional costs incurred for extra fees and travelling and other expenses of a like nature incurred by reason

CRIMINAL P. C. (V of 1898), S. 148 — 1. Amount of costs

of bringing pleaders or counsel from a distance should not be allowed. (Henderson and Geidt JJ.) Rajendra Narain Roy v. Mahomed Arzumand Khan,

9 C W N 887=1 C L J 331=2 Cr L J 408.

2. Applicability and scope.

——Application under S. 145—Dismissal in default—Legality—See ibid, S. 145,

AIR 1952 All 538=1952 Cr L J 637.

——Local inspection — Cannot take the place of legal evidence.

The object of local inspection is to understand and appreciate the typography of the land in dispute in order to aid the Magistrate in appreciating the evidence offered in court; but the local inspection cannot take the place of legal evidence much less the result thereof can be used as a basis for the decision. Rama Sahai Singh v. Dwarka Singh : 61 I C 712, followed. (Jwala Prasad J.) Mt. Ram Ratan Kuar v. Tarakh Nath,

AIR 1922 Pat 249=77 I C 492=25 Cr L J 412.

——Principles regarding.

Section 148 clearly provides for local inspection whenever such enquiry is deemed necessary for the purposes of Chapter XII of the Code. Such enquiry can be made either by any Magistrate subordinate to the Magistrate before whom the case is pending or by that Magistrate himself. Although as a rule it is better to have such an investigation made by some other person, there is nothing in law to prevent the presiding Magistrate from making the investigation himself, provided he records what he saw and does not act upon hearsay evidence. It is a salutary principle of law that the finding of a Court must be based upon evidence duly recorded by it and not upon the impression formed by the Judge on a local inspection of the locality. He can then in order to elucidate the evidence make a local inspection and the object of a local enquiry would be only with a view to understand the evidence actually adduced in the case . . . Moreover, it is absolutely necessary that if a Magistrate makes a local enquiry he must make a note of what he saw and must place it on the record so that the parties may be in a position to know what impression the Magistrate had got by the local enquiry. (Kulwant Sahay J.) Abdul Hamid v. Hasan Raza,

AIR 1923 Pat 366=72 I C 951=4 P L T 297=1 Pat L R Cr 195=24 Cr L J 487.

——Inquiry prior to taking evidence is not necessary. (Jwala Prasad J.) Ram Sahai Singh v. Dwarka Singh,

AIR 1920 Pat 749=1 Pat L T 569 = 61 I C 712=22 Cr. L J. 424.

——Ss. 148 and 147—Local inspection.

The rule that in criminal cases Courts are only justified in holding a local inspection in order to explain the facts appearing in evidence does not apply to a case under S. 147, Cr. P. C., and the Court can hold local inspection in other circumstances as well. (Holmwood and Sharfuddin JJ.) Dowlat Koer v. Siva Pershad,

10 I C 615=15 C L J 267=12 Cr L J 319.

——Applicability.

The section has no bearing on the question whether a Magistrate trying a case under S. 147, Penal Code, has the power to hold a local inspection for the purpose of testing the credibility of witnesses examined on either side. (Stephen, Woodroffe and Chatterjee JJ.) Babbon Shaikh v. Emperor,

5 I C 365=37 Cal 340 = 11 C L J 335 = 14 C W N 422=11 Cr L J 121.

——S. 148 (3)—Order for costs—Interference.

CRIMINAL P. C. (V of 1898), S. 148—2. Applicability and scope

A wide discretion in the matter of awarding costs is given to a Magistrate by S. 148 (3), and the High Court has no power, in revision, to interfere with his exercise of that discretion. (Henderson and Geidt JJ.) Rajendra Narain Roy v. Mahomed Arzumand Khan.

9 C W N 887=1 C L J 331=2 Cr L I 408.

3. Costs—Sub-section (3).

——Duty of Magistrate to hear parties.

Section 148 (3) covers all kinds of costs. It covers not only the costs payable by one party to another, but also all costs incurred by the Magistrate in making an order under S. 145.

A Magistrate should hear the parties before making an order under S. 148 (3). If he has not done so, but the Sessions Judge does so when the case comes before him, the defect is cured. (Lobo and Tyabji JJ.) Darbar Singh Jagat Singh v. Hafiz Abdul Aziz.

AIR 1945 Sind 3 = I L R (1944) Kar 204 = 217 I C 199=46 Cr L J 240.

——S. 148 (3) — Successor to Magistrate passing orders under Ss. 145 to 148, if can award costs.

The word "Magistrate" in S. 148 (3) refers to the person and not to the office. Hence, a Magistrate acts without jurisdiction in ordering costs, if he is not the Magistrate who passed the decision under S. 145. The successor to the Magistrate who passed an order under Ss. 145 to 147, cannot pass an order as to costs under S. 148 (3). (Horwill J.) Bagavandas Moopanar v. Muhammad Gani Rowther

AIR 1943 Mad 478 = 1943 M W N 226 = 56 L W 223 = (1943) 1 M L J 319 = 16 R M 251 = ILR (1944) Mad 144 = 208 I C 321 = 44 Cr L J 778.

——S. 148 (3) — An order for costs under S. 148 (3), Criminal P. C., is an order incidental to an order for possession under S. 145, Criminal P. C. (Page C. J., Das and Dunkley JJ.) Ma Mya Khin v. Maung Po Htwe

AIR 1933 Rang 288 (291) = 6 R Rang 64=11 Rang 361=145 I C 837 = 35 Cr L J 1 (FB).

——Order under S. 148 for costs must be made by the Magistrate who tried the case under S. 145 and the application for costs must be made within a reasonable time : 24 C W N 672, Foll. (Fazl Ali J.) Manglu Sahu v. Ramdhani Tomboli

AIR 1929 Pat 93 = 9 P L T 835 = 114 I C 193 = 12 A I Cr R 212 = 30 Cr L J 252.

——Order allowing withdrawal or staying proceedings under S. 145—Costs can be awarded.

An order permitting the withdrawal of proceedings, and more so a final irrevocable order staying proceedings instituted under S. 145 of the Code after the Magistrate has assumed jurisdiction under that section is an order falling within the purview of Sub-S. 5 of that section and, as such, decision under that section within the meaning of S. 148. It is a decision by him that no such dispute has existed or exists, as to give him jurisdiction to continue the proceedings. There is nothing in sub-S. (5) to prevent a Magistrate in arriving at the decision without recording any evidence whatsoever ; and it is equally within his competence to rely upon information recorded by him from any source whatsoever including that contained in a statement made by any party to the proceedings. 9 M L T 324, Diss. from; 30 Cal 112 and 20 Cal 867, Rel. on. Where, therefore, a Magistrate has permitted the withdrawal of the proceedings or has made an order staying proceedings altogether, it may fairly be assumed that he has acted on such implied admission and has decided under sub-s. (5) of S. 145 that no disputes exist which would give him jurisdiction to continue the proceedings and that he is, therefore, competent to award costs.

CRIMINAL P. C. (V of 1898), S. 148 — 3. Costs—Sub-s. (3)

(Rupchand Bilaram and DeSouza, A. J. C.s) Relumal v. Pherumal

AIR 1928 Sind 193=22 S L R 386=111 I C 441=29 Cr L J 857.

——Ss. 148 and 145 — Order for costs must give details.

In awarding costs in proceedings under S. 145, the Magistrate did not mention how the sum of Rs. 100 awarded as costs was computed or that he had made any enquiry as to what the actual pleader's fees and the costs of the witnesses were. Held such an order is without jurisdiction and must be set aside, 1 P L T 369, Foll. (Adami J.) Hira Mahton v. Rajkumar Mahton

AIR 1922 Pat 564 = 3 Pat L T 484 = 68 I C 44 = 1 Pat L R Cr 15 = 23 Cr L J 508.

——Costs—Order as to—Basis.

Under S. 148, Criminal P. C. the Magistrate can award costs to the successful party, but they should be based on proper materials, viz., the actual costs incurred as pleader's fees and costs of witnesses. (Sultan Ahmad J.) Jhaman Mahton v. Thakuri Mahton

AIR 1920 Pat 219 = 1 Pat L T 369 = 57 I C 449 = 2 U P L R (Pat) 192 = 21 Cr L J 625.

——S. 148 (3) — Penalty on documents included in costs.

Under Cl. 3 of the section, a Magistrate has no jurisdiction to include in costs, the penalty paid on a document not properly stamped, (Benson J.) Tummalagunta Kotiah v. Papury Peddanna

[It can now be included in costs—Ed.]

13 M L T 224 = 19 I C 306 = 14 Cr L J 210.

——S. 148 (3) — Scope of — Stamp Act, 44 (3)

Section 148 (3) of Criminal P. C. permits a magistrate to award costs but such awarding is limited to the costs mentioned in the Code. The Magistrate cannot deal with other costs by reasons of S. 44 (3) of the Stamp Act. (Miller and Sadasiva Aiyer JJ.) Popuri Peddanna v. Tunimala Ganta Kotiah

[But the law has now been changed—Ed.]

13 M L T 224 = 14 I C 761 = 13 Cr L J 297.

——"Decision" meaning—Costs.

An order allowing proceedings under S. 145 to be withdrawn is not a "decision' within S. 148 and an award of costs to the counter-petitioner is illegal. (Munro J.) Narasimhachariar v. Pillanna

9 M L T 324 = 9 I C 289 = 12 Cr L J 49.

——S. 148 (3) — Jurisdiction of another Magistrate to assess costs.

A Magistrate who has not actually passed an order under S. 145 has jurisdiction to assess the costs of the proceedings under S. 145. (Brett and Stephen JJ.) Dilbasi Koer v. Deorati Koer,

10 C W N 1030 = 4 Cr L J 171.

——S. 148 — Magistrate's jurisdiction to pass order for damages — A Magistrate has no jurisdiction to make an order as to costs other than those incurred for witnesses or pleader's fees or both. He has no jurisdiction to award compensation for damages done to crops. (Henderson and Geidt JJ.) Prayag Mahaton v. Gobind Mahaton

32 C 602 = 9 C W N 862 = 2 Cr L J 552

4. For and against whom costs can be ordered.

——S. 148 (3) —Fact that witnesses are examined locally does not disentitle party to costs properly incurred. (Dhavle J.) Kunjo Mandal v. Sarju Ram Marwari

AIR 1939 Pat 206 = 20 P L T 164 = 5 B R 539 = 11 R P 573 = 181 I C 176 = 40 Cr L J 538

——The applicant induced the Magistrate to assume jurisdiction under Chap. XII, Criminal P. C., when he had no such jurisdiction.

CRIMINAL P. C. (V of 1898), S. 148 — 4. For and against whom costs can be ordered

Held, in consequence of his unlawful act he could be made to pay the costs incurred by the other side (Rupchand Bilaram and DeSouza A. J. C.s) Relumal v. Pherumal

AIR 1928 Sind 193=22 S L R 386 = 111 I C 441 = 29 Cr L J 857.

——Only a party liable.

A magistrate has no power to saddle any person with costs of a proceeding under S. 145. Person to be charged must be a party. (Simpson A. J. C.) Emperor v. Chet Khan

AIR 1926 Oudh 269 = 91 I C 53 = 27 Cr L J 21.

5. "Local inquiry"—Meaning of

——Ss. 148 and 145 — Direction to survey and report respecting land in dispute under S. 145 — Is not a local inquiry but a ministerial act.

The direction was merely "to survey the disputed lands and report within 15 days." All that the person had to do was to ascertain from the parties what lands were in dispute and then to survey the lands pointed out and to draw up a map and report what he had done. This was a ministerial act, whether the duty of survey was entrusted to a pleader commissioner or to an amin makes no difference ; stress cannot be laid on the fact that the person selected to do the work bore the title of pleader commissioner. It cannot be held that the survey of the lands, after enquiry from all the parties as to what land was in dispute amounted to a "local inquiry" within the meaning of S. 148, Criminal Procedure Code. It was a mere ministerial act. (Adami and Ross JJ.) Chulai Mahto v. Surendra Nath

AIR 1922 Pat 224 (2) = 1 Pat 75 = 3 Pat L T 17 = 65 I C 616 = 23 Cr L J 152.

——'Local enquiry'—Evidence.

The words 'Local enquiry' in S. 148 do not mean mere inspection but authorise examination of witnesses. Per Ayling J.—Whatever may be the scope of enquiry under S. 148 by a Subordinate Magistrate, the Magistrate delegating is not absolved from the duty imposed by S. 145 (4) for receiving any evidence produced before him by the parties and taking further evidence if necessary. (Ayling and Seshagiri Iyer JJ.) Muthuswami Nadan v. Kalinga Moopan.

AIR 1918 Mad 791 = 33 M L J 78 = 40 I C 715=18 Cr L J 715.

6. Notice.

——Order as to costs passed simultaneously with final order in presence of aggrieved party — Fresh notice, if necessary.

Where an order as to costs under S. 148, Criminal P. C., is passed simultaneously with the final order in the presence of the aggrieved party, it is not necessary that fresh notice should be given. (C. C. Ghose Actg. C. J., and S. K. Ghose J.) Nezamal Ashan v. Golam Mohammad

AIR 1934 Cal 80 (1)=37 C W N 852 = 6 R C 362 = 147 I C 800 (2)=35 Cr L J 478.

——Application for costs — Order without notice to other party is illegal.

An order awarding costs on the application of one of the parties without notice to the other party is without jurisdiction. (Ayling J.) Palaniandi Servai v. Sammandi Ammal

AIR 1923 Mad 87 (2)= 16 L W 613=71 I C 128=24 Cr L J 80.

——Costs—Notice to opposite party.

No order as to costs can be made under S. 148 without notice to the opposite party. (Jwala Prasad J.) Dwarka Rai v. Nathuni Koeri

AIR 1918 Pat 658=46 I C 604=19 Cr L J 764.

CRIMINAL P. C. (V of 1898), S. 148 — 6. Notice

——S. 148 (3) — Order as to costs without notice to opposite party.

An order of assessment of costs passed without notice to the opposite party is without jurisdiction and can be cancelled. But the Magistrate cannot subsequently set it aside himself on the ground that it was passed without due notice to the opposite party. (Brett and Stephen JJ.) Dilbasi Koer v. Deorati Koer

10 C W N 1030=4 Cr L J 171.

7. Recovery of costs.

——Ss. 148 (3) and 145 — Costs ordered — Court has no discretion afterwards to refuse to recover it.

Where a Magistrate or his predecessor has ordered the costs to be recovered, he has afterwards no discretion to refuse to recover costs on the ground of long delay, limitation being six years or any other ground. The Magistrate having excused one of the persons from payment of costs it will be open to the opponent in applying for distress warrants to exempt him from the list of persons from whom the costs are to be recovered. The use of the word "may in his discretion" in section 386 cannot be used for the purpose of interpreting the words "may be recovered" in section 148. The discretion in section 386 only refers to cases where there has been a conviction and sentence and the sentence directs that in default of payment of fine, the offender shall be imprisoned. (Adami J.) Harendra Krishna v. Balkumar

AIR 1923 Pat 57=3 Pat L T 762=71 I C 254=24 Cr L J 126.

8. Revision.

——Only trial Court and not High Court.

An order as to costs under S. 148 is a discretionary order, and it is better that the discretion should be exercised by the Court of trial, and not by the High Court, on incomplete materials, in revision. (Simpson A. J. C.) Emperor v. Chet Khan

AIR 1926 Oudh 269=91 I C 53=27 Cr L J 21.

9. When order for costs should be made.

——S. 148 (3)—Order as to costs after disposal of case.

Section 148 (3) does not fix any limit of time for passing the order as to costs. All that is needed is that the Magistrate passing the decision should make an order as to costs. An order for costs passed a few days after the decision of the case is not an illegal order.

Section 146 (3) does not expressly state that a party should have an opportunity of being heard before an order for costs is passed against him, and the Magistrate, therefore, cannot be held guilty of an "irregularity," where he passes an ex parte order. (Mukerji Actg., C. J., Young and King JJ.) Kapoor Chand v. Suraj Prasad

AIR 1933 All 264 = 1933 A L J 188 = Ind Rul 1933 All 125=55 All 301=142 I C 537= 34 Cr L J 414 (FB).

——S. 148 (3)—Costs—Order for, subsequent to passing of judgment.

An order for costs may be made subsequent to the passing of the judgment in a case under S. 145. All that the law requires is that the orders should be by the same Magistrate. If an application for costs is not made at the time the judgment is delivered, it should be filed within a reasonable time. (Sanderson C. J. and Walmsley J.) Nafar Chandra Pal Choudhary v. Sidhartha Krishna Mazumdar

AIR 1920 Cal 320=24 C W N 672=32 C L J 34= 58 I C 255=47 Cal 978=21 Cr L J 751.

——S. 148 (3)—Costs — Order passed 10 days after order in proceedings under S. 145, Criminal P. C.

An order directing payment of costs was passed 10 days after the order declaring the possession under S. 145 of the Criminal P. C. Held that the delay was not such as was not permitted by the Criminal P. C. : 15 Cr. L. J. 267 and 29 Mad. 373, Foll. (Imam J.) Chadhari Ahir v. Raja Ram Singh

AIR 1918 Pat 481=4 Pat L W 234=44 I C 748 = 19 Cr L J 396.

——Costs—Order when to be made.

An order as to costs under S. 148 should be made at the time of passing the decision. (Holmwood and Sharfuddin JJ.) Bansi Singh v. Mahammad Akbar Ali

15 C W N 811=11 I C 144=12 Cr L J 376.

——S. 148 (3)—Costs—When can be assessed.

There is no decision of the Court that an order for costs in a case under S. 147 need be made at the time of the delivery of judgment. (Holmwood and Sharfuddin JJ.) Dowlet Koer v. Siva Pershad

15 C L J 267=10 I C 615=12 Cr L J 319.

——Magistrate entitled to pass order for costs in proceedings under S. 145, 146 or 147— Time at which it is proper to pass the order.

The only person who can decide by whom costs are to be paid is the Magistrate who passed the order under Ss. 145, 146 or 147 though the actual assessment of the amount to be paid may be made by his successor. Further the order for costs should as a rule be made at the time of passing the order under Ss. 145, 146 or 147 when the facts are fresh in the mind of the Magistrate. (Chamier J. C., and Evans A. J. C.) Iklas Kuar v. Raja Raghuraj Bahadur Singh

13 O C 66=5 Ind Cas 943=11 Cr L J 335.

——S. 148 (3)—In the usual course, an award of costs under S. 148 (3), should almost invariably be contemporaneous with the decision as to the main question. A different course should be pursued only when the circumstances of the case really required the postponement of the disposal of the question of costs and no order in the matter should be passed except within a reasonable time after the disposal of the principle subject of the proceedings and in the presence of both the parties. (Subrahmania Ayyar J.) Vythinada Tambiran v. Mayandi Chetty,

29 Mad 373=4 Cr L I 232.

10. Who can hold the enquiry.

——Local enquiry in a proceeding under S. 145 by pleader commissioner is not a serious error—Local enquiry after first party closed their case—Failure to allow such party to show that report is erroneous is a serious error. (Shearer J.) J. W. Broucke v. Kamleshwari Narain Singh.

AIR 1950 Pat 472.

——Ss. 148, 147—Local inspections — Court must make a note of what he saw and place it on record.

Section 148 clearly provides for local inspection whenever such enquiry is deemed necessary for the purposes of Chapter XII of the Code. Such enquiry can be made either by any Magistrate subordinate to the Magistrate before whom the case is pending or by that Magistrate himself. Although as a rule it is better to have such an investigation made by some other person, there is nothing in law to prevent the presiding Magistrate from making the investigation himself provided he records what he saw and does not set upon hearsay evidence. It is a salutary principle of law that the finding of a Court must be based upon evidence duly recorded by it and not upon the impression formed by the Judge on a local inspection of the locality. He can in order to elucidate the evidence make a local inspection and the object of a local enquiry would be only with a view to understand the evidence actually adduced in the case.

CRIMINAL P. C. (V of 1898), S. 148—10. Who can hold the enquiry

Moreover it is absolutely necessary that if a Magistrate makes a local enquiry he must make a note of what he saw and must place it on the record so that the parties may be in a position to know what impression the Magistrate had got by the local enquiry : 15 C L J 267, Foll. (Kulwant Sahay J.) Abdul Hamid v. Hasan Rasya,

AIR 1923 Pat 366=4 Pat L T 297=1 Pat L R (Cr) 195=72 I C 951=24 Cr L J 487.

——Kanungo—Can be deputed.

Section 148 of the Code is an enabling section and a deputation of a kanungo to make an inquiry is not bad. (Holmwood and Sharfuddin JJ.) Achambit Das v. Sarada Prasad Holdar.

12 I C 88=12 Cr L J 480 (Cal).

——Right of reference to subordinate.

A First Class Magistrate referred a case to his subordinate without pointing out how any local inquiry is necessary and merely because a criminal trespass case was pending before the subordinate Magistrate. Held that the order was bad. (Miller J.) In re Ramaswami Nayaker,

3 M L T 402=8 Cr L J 150.

—S. 149.

——Per Sulaiman J. — To hold that under S. 149 a police officer can pass any oral order he thinks desirable, would be to hold that his word is law. If his powers were to be so wide, it would be unnecessary for the Magistrate or the police to take any precautionary measures in advance. It would be quite sufficient to send down a Sub-Inspector to the scene and let him pass all sorts of sweeping orders, disobedience of which will entail conviction. Such method, if sanctioned, would deprive the persons concerned of all opportunity to appeal to higher authorities, and they would have to submit to such orders at the peril of a prosecution. Such wide powers vested in a police officer would interfere unreasonably with the ordinary liberty of private citizens and could not have been contemplated to be within the scope of S. 149, Criminal P. C. (Walsh Ag. C. J. and Sulaiman J.) Emperor v. Raghunath Venaik,

AIR 1925 All 165 = 47 All 205 = 22 A L J 1049=6 L R A Cr 1=85 I C 823=26 Cr L J 599.

——Per Sulaiman J. — 'Interpose' connotes the idea of actively intervening and not merely a prohibition by word of mouth. (Walsh Ag. C. J. and Sulaiman J.) King Emperor v. Raghunath Venaik,

AIR 1925 All 165 = 47 All 205 = 22 A L J 1049=6 L A Cr 1=85 I C 823=26 Cr L J 599.

——Powers of Police—Police Act, S. 23.

Section 149, Cr. P. Code, does not restrict the Police in their preventive action to cognisable offences only. Their powers are defined by Cr. P. Code and the Police Act, S. 23. (Twomey J.) Emperor v. Nga Kala,

AIR 1917 Low Bur 152=8 L B R 329=10 Bur L T 17=35 I C 523=17 Cr L J 347.

—S. 150.

——Ss. 150, 164 and 364 — Preliminary enquiry — Confession to Magistrate — Not reduced to writing—Oral evidence of Magistrate—Admissibility.

Confessions by certain persons were made to a Magistrate during the preliminary enquiry by the Police under S. 159 of the Code, but were not reduced to writing by him. Held, that oral statements of the Magistrate as to those confessions are inadmissible in evidence. View of Shah J., in 52 I C 465, Diss. from. (Spencer and

CRIMINAL P. C. (V of 1898), S. 150

Kumarasamy Sastri JJ.) Tangulypolle Pedda Oligadu In re,

AIR 1922 Mad 40 = 45 Mad 230 = 14 L W 542 = (1921) M W N 779 = 30 M L T 107 = 69 I C 264=42 M L J 37=23 Cr L J 680.

—S. 151.

——One of two parties likely to cause breach of peace because other party wanting to exhibit film in his cinema house — Proceedings under S. 107 read with S. 151 if should be taken against former alone—See ibid, S. 107.

AIR 1950 Lah 132=51 Cr L J 1142.

——Scope — Power under, if analogous to power of preventive detention — Arrest of a person belonging to communist party—Validity.

(Per Full Bench; Ray C. J. dissenting)—The authority of a police officer under S. 151 is only a limited and exceptional power to prevent the commission of a cognizable offence by the individual concerned and is in no sense analogous to the power of preventive detention. Neither has the police-officer power to keep a person under arrest in anticipation of and pending a contemplated order of detention. To arrest a person because he belongs to a party (communists) and that party has a programme to commit some offences in general, is to exercise the power of preventive detention and is an abuse of the powers under S. 151. What is required is "knowledge" of a design i. e., of a plan for the commission of a particular offence, and the particular person sought to be arrested must have been associated with it in some way, however slight. (Ray C. J., Jagannadhadas, Panigrahi and Narasimham JJ.) Prahalad Panda v. Province of Orissa,

AIR 1950 Orissa 107=15 Cut L T 73=I L R (1949) 1 Cut 821=51 Cr L J 891.

——Arrest under — Discretion of police officer cannot be questioned.

It is not open to the High Court exercising its jurisdiction under S. 491 to go into the question whether, in fact, the police officer was justified in concluding that the person sought to be arrested was about to commit a cognizable offence and whether the police officer was equally justified in concluding that there were no other means by which the perpetration of the offence could have been prevented. The facts would not be capable of investigation in order to find out whether, in fact, a cognizable offence was intended to be committed or not, as the offence would still be at the stage of an intention and not passed into the region of facts. There would be nothing therefore on the face of the record to show that the arrest was illegal or improper within the meaning of S. 491 (1), cl. (b). (Satyanarayana Rao and Vishwanatha Sastri JJ.) In re Om Prakash Gupta,

A I R 1949 Mad 744=62 M L W 394=1949 M W N 448=1949-1 M L J 554=51 Cr L J 143.

——Arrest without emergency — Private defence — Right of.

If without any emergency for arrest contemplated by S. 151, a Police Officer arrests or attempts to arrest a person, the arrest or the attempt to arrest is not only not strictly justifiable by law but is illegal and the person who is arrested or attempted to be arrested, is entitled to offer resistance. If further, such person apprehends hurt at the hands of armed constables sent for the arrest, and such constables use criminal force towards such person, who retaliates it causing them simple injury it cannot be said that he has exceeded his right of private defence. 24 Cal 320 and A I R 1926 Lah 19, Rel. on. (Zafar Ali and Bhide, JJ.) Gaman v. Emperor,

A I R 1930 Lah 348 = 121 I C 734=31 P L R 285 = 1930 Cr C 396=31 Cr L J 294.

CRIMINAL P. C. (V of 1898)

—S. 153.

——Power of Calcutta Police to conduct proceedings under Code for collection of evidence.

The Calcutta Police have no power to conduct proceedings under the Code for the collection of evidence since the provisions of Chap. XIV which confer such power have not been extended to the Police in Calcutta, and no provision of the Code applies to them unless expressly extended. Hoshide v. Emperor,

A I R 1940 Cal 97 = 44 C W N 82 = 12 R C 510 = I L R (1940) 1 Cal 231=186 I C 486=41 Cr L J 329.

——Chapter XIV being controlled by S. 5 (2), the Police have no right to file a charge sheet or otherwise to proceed under Chap. XIV in respect of an offence under the Bombay Abkari Act. (Ferrers J. C., Mehta and Rupchand A. J. Cs.) Emperor v. Mahomed Usman,

A I R 1933 Sind 325=6 R S 65=146 I C 419=35 Cr L J 129 (F B).

——Chap. XIV (Ss. 154-176)—Penal Code, S. 211—Statements made in course of investigation, whether 'charge'.

Statements made in the course of an investigation under Chap. XIV, are not "charges" as contemplated by S. 211, Penal Code. (Jackson J.) In re Kodangi,

A I R 1932 Mad 24 = 1931 M W N 1138 = 34 L W 858=61 M L J 860 = Ind Rul 1932 Mad 174 (1) = 135 I C 590 (1)=33 Cr L J 173.

——Ch. XIV (Ss. 154 to 176) — Investigation—Condition necessary.

Before there should be an investigation under Chap. XIV there must be an information given to an officer in charge of a police station and reduced to writing by him. (Newbould and Mukerjee, JJ.) Dargahi v. Emperor,

A I R 1925 Cal 831=83 I C 733=52 Cal 499 = 26 Cr L J 1213.

——Weights and measures—Allowance for rough wear.

Section 153, Cr. P. Code, authorizes an inspection of weights and measures by the officer in charge of the Police Station, but when there are no standard weights preserved to enable the bazaar man to compare the weights with them it is impossible to justify an inference of fraud from variations. Allowance should be made for reasonable wear and tear and for the rough and ready methods of bazaar man. (Kensington, J.) Emperor v. Nanak Chand,

A I R 1914 Lah 42 = 20 P R (Cr) 1913 = 36 P L R 1914=22 I C 155=15 Cr L J 11.

—S. 154.

See also (1) ibid, S. 297.
(2) ibid, S. 303.
(3) ibid, S. 550.
(4) S. 211, Penal Code.

SYNOPSIS

1. Applicability.
2. Evidentiary value.
   (a) Absence of F. I. R.
   (b) Delay in giving information.
   (c) Difference between information and evidence.
   (d) Failure to sign report.
   (e) General.
   (f) Information based on hearsay.
   (g) Miscellaneous.
   (h) Non-mention of names of accused.
   (i) Non-mention of names of witnesses.
   (j) No substantive evidence.
   (k) Use as dying declaration.
   (l) Useful for contradiction or corroboration.
3. False complaint.
4. First information by accused.
5. Granting copies.

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6. Information in a non-cognizable case — See Criminal P. C., S. 155.
7. Officer in charge of police station.
8. Procedure in admitting.
9. Recording of information.
10. What is first information report.
    (a) Casual statements.
    (b) Information before commission of offence.
    (c) Information during investigation.
    (d) Information first in point of time.
    (e) Sufficiency of information.
    (f) Telephone or telegram messages.

1. Applicability.

——Ss. 154 to 156, 561-A—Cognizable offence—Statutory right of Police under Ss. 154 and 156 to investigate — High Court, when can interfere under S. 561-A.

The judiciary should not interfere with the Police in matters which are within their province and into which the law imposes upon them the duty of enquiry.

The Police have, under Ss. 154 to 156, Criminal P. C., a statutory right to investigate a cognizable offence without requiring the sanction of the Court and hence to quash the Police investigation on the ground that it would be an abuse of the powers of the Court is to act on treacherous grounds.

No doubt, if no cognizable offence is disclosed, and still more, if no offence of any kind is disclosed, the Police would have no authority to undertake an investigation and if they do so, the High Court may interfere under S. 561-A, (Lords Chancellor, Viscount Simon, Porter, Simonds, Goddard and Sir Madhavan Nair.) King-Emperor v. Nazir Ahmad,

A I R 1945 P C 18 = 11 B R 180 = 1945 A L J 47= 26 P L T 56=47 Bom L R 245=17 R P C 51=80 C L J 19 = 1945 O W N 258 = I L R (1945) Lah 1 = 1945 A W R (P C) 21 = I L R (1945) Kar (P C) 89 Sup = 49 Cal W N 191 = 1945 Mad W N 49 = (1945) 1 Mad L J 86=71 I A 203=58 M L W 57=217 I C 1=46 Cr L J 413 (P C).

——Ss. 154 to 156—Object of.

The object of the provisions of Ss. 154 to 156, Criminal P. C., as to an information report is to obtain early information of alleged criminal activity, to record the circumstances before there is time for them to be forgotten or embellished and it has to be remembered that the report can be put in evidence when the informant is examined if it is desired to do so (Lords Chancellor Viscount Simon, Porter, Simonds, Goddard and Sir Madhavan Nair.) King-Emperor v. Nazir Ahmad,

A I R 1945 P C 18 = 11 B R 180 = 1945 A L J 47= 26 P L T 56=47 Bom L R 245=17 R P C 51=80 CLJ 19 = 1945 O W N 258 = I L R (1945) Lah 1 = 1945 A W R (P C) 21=I L R (1945) Kar (P C) 89 Sup=49 Cal W N 191 = 1945 Mad W N 49 =(1945) 1 Mad L J 86=58 Mad L W 57=71 I A 203=217 I C 1=46 Cr L J 413 (P C).

——Chap. XIV, S. 155 (3) — Applicability of Chap. XIV to cognizable and non-cognizable cases.

Chapter XIV, Criminal P. C., applies equally to cases, cognizable and non-cognizable; only in non-cognizable cases, the Police Officer is not to take up investigation without the order of a Magistrate. But when he does take up the investigation in non-cognizable cases, the investigation which he holds becomes an investigation under Chap. XIV, provided the requirements of S. 155 (3),

CRIMINAL P. C. (V of 1898), S. 154 — 1. Applicability

Criminal P. C., are complied with. (Lodge and Pal, JJ.) Naresh Chandra Das v. Emperor,

A I R 1942 Cal 593=46 C W N 180=I L R (1942) 1 Cal 436=75 C L J 507 = 15 R C 497=204 I C 111=44 Cr L J 145.

——Applicability of S. 154 in Calcutta.

Section 154, Criminal P. C., has no application in Calcutta, and therefore, it is not relevant at all in a case arising in Calcutta. (Derbyshire C. J. and Costello JJ.) Plucknett Cyril Bertram v. Emperor,

AIR 1939 Cal 545=ILR (1939) 1 Cal 162=43 C W N 120=12 R C 295=184 I C 757=41 Cr L J 72.

2. Evidentiary value.

(a) Absence of F. I. R.
(b) Delay in giving information.
(c) Difference between information and evidence.
(d) Failure to sign report.
(e) General.
(f) Information based on hearsay.
(g) Miscellaneous.
(h) Non-mention of names of accused.
(i) Non-mention of names of witnesses.
(j) No substantive evidence.
(k) Use as dying declaration.
(l) Useful for contradiction or corroboration.

2. Evidentiary value.

(a) Absence of F. I. R.

——Importance of first information report.

Absence of first information report deprives the accused of his right of cross-examination of the first informant on its basis. Generally the absence of first information report does cast a cloud of suspicion and tends to weaken the prosecution case. (J. S. Ranawat and D. S. Dave JJ.) Lila Dhar v. The State,

ILR (1952) 2 Raj 1031 : 1953 Raj L W 348.

2. Evidentiary value.

(b) Delay in giving information.

——Delay in giving first information.

Murderous assult at place twelve miles distant from Police Station—Victims not dying at once—One of victims husband and the other brother-in-law of informant — In view that informant's first thoughts would have been to tend the victims and also that she had to cover the distance to the police station partly on foot and partly by lorry a report made to the police 6½ hours after the occurrence was held prompt. (Mahajan, Bose and Jagannadha Das JJ.) Dalip Singh v. State of Punjab,

AIR 1953 S C 364=1953 S C J 532=1953 S C A 709 =1953 M W N 642 = 1954 S C R 145 = 1953 Cr L J 1465 (SC).

——Delay in lodging first informatton—Effect.

Though the delay in lodging the first information report cannot alone prove fatal to the prosecution case, the delay along with certain other circumstances may weaken the prosecution case. (Narayan J., On Difference between Sarjoo Prasad and Sinha JJ.) State of Bihar v. Ram Sarup Mahto,

1953 B L J R 627.

——Ss. 154 and 297—Non-direction — First information given by person, not an eye witness, after great delay—Failure to warn jury about value to be attached to it—Effect.

A first information report is at times, regarded as part of the 'res gestae' and on that basis it is sometimes used, not merely for the purpose of corroborating or contradicting the person who lodged it but also for the purpose of lending some assurance to or negationing the general account as given by other witnesses. Where, however, the first information report, besides being lodged by a person who had not seen the occurrence at all was lodged about 18 hours after the occurrence, the merit of being a very early account of the incident and thus of being presumably authentic cannot therefore be claimed for it to the same extent as in ordinary cases.

If in such a case the judge in his charge to the jury fails to point out this aspect of the first information report but himself makes use of it at many places, for contrasting the account in the first information report with the case made out by other prosecution witnesses, the charge is vitiated and the accused must be held to be prejudiced. (Chakravartti and Sinha JJ.) Dhirendra Nath v. State,

AIR 1952 Cal 621=1952 Cr L J 1427.

——Ss. 154, 200—Early first information report or complaint—Necessity.

In innumerable cases either the early recorded first information report or the written complaint is the check against subsequent developments of the cases before the Magistrate. (Ray C. J.) Krushna Chandra v. Chhotalal Patel.

17 Cut L T 168.

——First information—Evidentiary value.

Where the first information was lodged by the illiterate servant of the complainant, even though the complainant himself was present, after the previous consultation between the village people as to what should and should not be dictated in the report the Court refused to attach that amount of importance to the report, as it would otherwise have done. (Dayal and Agarwala JJ.) Rex v. Hasnu,

AIR 1949 All 135=1949 A L J 257=1949 A W R H C 386=1949 All Cri Cas 91=I L R (1949) All 248=50 Cr L J 150.

——Where in the case of a fight between two parties, the complainant and the prosecution witnesses were simple rustics and the first information was made with remarkable promptness :

Held, that although the facts of the case were simple, the promptness with which the first report was lodged justified the inference in the circumstances of the case that the report was not a concocted story. (Davis C. J. and Lobo J.) Kassim Haji Khan v. Emperor,

AIR 1944 Sind 94=ILR (1943) Kar 294=16 R S 256 =212 I C 109=45 Cr L J 526.

——Ss. 154, 162 — First information recorded in Police diary—List of stolen property filed subsequently is admissible in evidence.

Section 162, Criminal P. C., has no reference to a list of stolen property. It is not even necessary for the complainant to state in the first information report that a list is being prepared and will be supplied to the Police because such a remark is obvious, but it is advisable that such a remark should be entered in the first information report and it is usually done. When it has once been stated that a list is being prepared and when that list is given to the investigating officer within a few hours or within a day or two if the dacoity is a very serious one, it is ridiculous to say that the list cannot become part of the record because the investigation has already started. The list of the stolen property is part of the information report and it should be signed. It is part of S. 154 and has nothing to do with S. 162.

Hence the fact that the list of the stolen property was filed after the Police had taken the first information report in the diary cannot render the list inadmissible in evidence. (Plowden J.) Brij Lal v. Emperor,

A I R 1943 All 216 = 1943 A L J 166=16 R A 25= 1943 A W R H C 75=207I C 15=44 Cr L J 555.

CRIMINAL P. C. (V of 1898), S. 154 — 2. Evidentiary value—(b) Delay in giving information

—— Delay of two days in making complaint to Police—The delay of two days in going to the Police is not remarkable in the case of illiterate persons with no money and no friends at the place of occurrence of the crime. (Beaumont C. J., N. J. Wadia and Sen JJ.) Emperor v. Kassamali Mirzaali

A I R 1942 Bom 71=44 Bom L R 27=I L R (1942) Bom 384.= 14 R B 357 = 199 I C 202=43 Cr L J 529 (FB).

——Delay in making report — Whether ground for rejecting evidence.

Delay in making a report to the Police is only a suspicious circumstance which puts the Court on its guard and cannot, by itself, be held to be a reason for rejecting evidence which is otherwise fully entitled to credit. (Blacker J.) Radha Kishen v. Emperor,

AIR 1938 Lah 714=11 R L 642=179 I C 880=40 Cr L J 261.

——First information—Earlier information not recorded —Effect.

In a trial for murder, the evidence disclosed that prior to what was recorded as first information, a report had been made to the police about the murder, but a record was not made of this nor the informant examined as a witness in the case.

Held the failure to record the earlier report entailed the discarding of the so-called first information, and the non-production of the person who gave the first report to the police deprived the accused of the valuable right of cross-examining a material witness. (Coutts and Ross JJ.) Chandrika Ram Kahar v. Emperor,

A I R 1922 Pat 535 = 1 P 401=3 P L T 771=(1923) Pat H C C 26=71 I C 353 = 1 Pat L R Cr 77 = 24 Cr L J 129.

2. Evidentiary value.

(c) Difference between information and evidence.

——Inconsistency between F. I. R. and evidence of informant—Evidence held would not be rejected.

The object of the F. I. R. is to have a contemporaneous account against the alleged offenders at the earliest opportunity when the occurrence took place and the inconsistency between the statements in the F. I. R. and the evidence of the informant at the trial would discredit the evidence of the informant to that extent but does not make the statement in the F. I. R. the evidence upon the matter in the case. (Srinivasachari and Jaganmohan Reddy JJ.) Narayan v. State,

AIR 1953 Hyd 161 = ILR (1953) Hyd 32 = 1953 Cr L J 935.

——Variance between first information report and the case.

Complete variance between the first information report and the case for which the accused have been committed not in regard to minor details or unimportant matters or side issues but in regard to main charges is enough to throw out the case as an unreliable one which will not commend itself to any tribunal. (Ramaswami J.) Narayan Reddi v. State.

AIR 1952 Mad 821=65 M L W 238 = 1952 M W N 369 = 1952 M W N (Cr) 81 = 1952-2 M L J 7 = 1953 Cr L J 29.

——How to use first information report.

Courts should not discount, the value of the first information report on the ground that minute details of the articles lost are not given therein. Case law referred. (Ramaswami J.) In re Battu Musalayya

66 Mad L W 777.

——Discrepancy between first information report and prosecution story.

CRIMINAL P. C. (V of 1898), S. 154 — 2. Evidentiary value—(c) Difference between information and evidence

A first information report is a very valuable document which throws much light on the state of affairs which were known at the time of its making at least to the persons making it. Consequently, if at the trial a story is given which differs in material particulars from the one given in the first information report it has always been treated with grave suspicion and the accused has been given the benefit of doubt arising from such contradictions and discrepancies. A very heavy duty is cast on the prosecution to explain the reason for the different versions given by the prosecution witnesses and the first information report. AIR 1931 Lah 157; AIR 1933 Oudh 148; 12 I C 217, Rel. on. (K. N. Wanchoo C. J. and Ranawat J.) State v. Daryay-i-Ram.

1952 Raj L W 140=ILR (1951) 1 Raj 806.

——Inconsistency between first information report by complainant and his evidence at trial — Prosecution witnesses ought to be asked to explain in examination-in-chief — No weight can be attached to failure of defence to cross-examine complainant on the point.

The lack of any cross-examination of the prosecution witnesses as to a fact within their knowledge, which the defence seek to establish, is properly a matter of comment and inference; but there is no obligation on the defence, by cross examination, to fill in a lacuna in the case for the prosecution.

When there is an inconsistency between the fard bayan attached to the first information report made and signed by the complainant and his evidence given at the trial, it is a matter which the prosecution witnesses should be asked to explain in examination-in-chief and no great weight can be attached to the failure of the defence to cross examine the complainant on the point. (Agarwala and Bennett JJ.) Awadh Singh v. Emperor.

AIR 1947 Pat 23=25 Pat 298=13 B R 213=228 I C 453=27 P L T 433=48 Cr L J 222.

——First information not by eye-witness — Minor discrepancies—Effect.

Minor discrepancies between the statement of the case as given in the first information report and in the evidence of the eye-witnesses, are immaterial and of no consequence, when the first information report was not made by an eye-witness. (Tek Chand and Sale JJ.) Nasib Singh Prem Singh v. Emperor,

AIR 1943 Lah 89=45 P L R 82 = 15 R L 338=207 I C 32=44 Cr L J 552.

——Story not mentioned in First Information Report but mentioned in Court, should not be believed.

Where there is no mention of a certain incident in the first information report given by a person but such incident is given by him in evidence in Court, his story in Court should be disbelieved. (Almond J. C. and Mir Ahmad J.) Sher Ali v. Emperor,

AIR 1942 Pesh 51 (52)=15 R Pesh 29 = 201 I C 705 =43 Cr L J 766.

——Every detail need not be given in the first report to the police, which is not substantive evidence. (Addison and Skemp JJ.) Emperor v. Ibrahim.

AIR 1928 Lah 17=105 I C 807=8 Lah 605=28 P L R 649=9 A I Cr R 132=28 Cr L J 983.

——Where the first information report was made by one not an eye-witness of the affair, and he based his report upon third-hand information, and the report itself did not profess to mention the names of all the culprits, and did not definitely state even the number of the persons who came to the house of the deceased, the omission of the names of some persons cannot be regarded as an

CRIMINAL P. C. (V of 1898), S. 154—2. Evidentiary value — (c) Difference between information and evidence

adequate ground for distrusting an eye-witness's deposition to the contrary. (Shadi Lal C. J. and Addison J.) Karman v. Emperor,

AIR 1926 Lah 369=93 I C 1040=27 Cr L J 544.

——First information report — Value of — In conflict with story in the witness box — Conviction based on the report bad.

First information report is not substantive evidence of the facts recorded in them and a conviction cannot be based on such reports. They can be used to corroborate the witnesses who made them and are of value showing that they told the same story at the first possible occasion. If they tell a different story in Court, the report can be used to contradict them or discredit their testimony. But it is not legitimate for a Court, when witnesses tell a different story in the witness box and contradict the report made by them, to discard the evidence given on oath and to rely on the report. (Ryves J.) Jamaluddin v. King-Emperor,

AIR 1924 All 154=74 I C 716=24 Cr L J 812.

——Ss. 154 and 367 — Evidence — First report—Discrepancy.

Where it was found that there were striking discrepancies between the first report and the story told by prosecution witness in Court, the Chief Court in revision set aside the conviction of the accused as not justified. (Johnstone C. J.) Mohabli v. Crown,

AIR 1915 Lah 438 = 34 P W R 1915 (Cr) = 30 I C 747=188 P L R 1915=16 Cr L J 699.

——Inconsistency between first information and the theory of the prosecution.

The inconsistency of the first information with the theory of the prosecution is a very weak feature of a case which depends on circumstantial evidence. (Francis Maclean C. J. and Holmwood J.) Nazir Jharudar v. Emperor,

9 C W N 474=2 Cr L J 255.

2. Evidentiary value.

(d) Failure to sign report.

——Failure to sign first information report—Effect on its admissibility.

Section 154 of the Code is after all a rule of procedure laid down by the Legislature to be observed by the police in recording the first information report. If this rule of procedure is not adopted, the question of the admissibility of the report will not be affected even the least. Thus the failure to sign the report by the person who gave it as laid down in S. 154, Cr. P. C., may affect the credit that is to be given to the report, but nevertheless, the report will be admissible in evidence : AIR 1935 Pesh 165, Relied on. (Kashem Chandra Gupta and Trilochan Dutt JJ.) Sheo Dan Ram Dan v. State.

1951 Raj L W 105.

2. Evidentiary value.

(e) General.

——Importance of first information report.

The importance of a first information report lies only in the fact as to what was the initial version of the case as reported to the Police. The fact that the F. I. R. was not taken down as a F. I. R. but was taken down as a report in the General Diary is no ground on which the report, which, in fact, really amounted to a F. I. R., should have been suppressed by the prosecution. (Atmacharan J. C.) Nanu Ram v. State

AIR 1952 Ajmer 41 (1)= 1952 A M L J 20= 1952 Cr L J 1372.

——Importance of first information.

'Per Ram Labhaya J. — The importance of the First Information about the occurrence emanating from the complainant lies in fact that it is statement made soon after the occurrence. The memory is then fresh and if the statement is made soon after the occurrence, there would be no opportunity left for successful fabrication. Its object is to obtain early information of alleged criminal activity and to record the circumstances before there is time for them to be forgotten or embellished. The implication is that when once the prosecution case is put in the first information, opportunities for improving it are considerably reduced as any prosecution case that may be subsequently set up can be checked up in the light of the F. I. R. particularly when it is made by the complainant himself. (Thadani C. J. and Ram Labhaya J.) Kachu Gogai v. State

AIR 1951 Assam 151= ILR (1951) 3 Assam 439=52 Cr L J 1457.

——Nature and use of first information — The first information, recorded, as directed by S. 154, at the time it is made, is of considerable value at the trial. It shows on what materials the investigation commenced and what was the story then told. A statement, recorded long after commencement of investigation and after there has been some development, is no first information. It has very little or no value at all because it is quite possible to make a statement which would be in conformity with the case as then developed. (Prinsep C. J. and Henderson J.) Emperor v. Kampu Kuki

11 C W N 554=6 Cr L J 86.

2. Evidentiary value.

(f) Information based on hearsay.

——Report based on hearsay — No importance to be attached to discrepancies.

When the facts stated in the first information report are based on hearsay, much importance cannot be attached to the discrepancies which are to be found in it. (Harish Chandra and Akbar Hussain JJ.) Sheo Balak Dusadh v. Emperor

AIR 1948 All 103 =1947 A L J 573= ILR (1948) All 3=1947 A W R H C 352=49 Cr L J 62.

——Ss. 154 and 155—First information hearsay.

A first report made by a person on information received from some unknown person cannot be admitted in evidence as it is mere hearsay. (Rattigan J.) Fateh Sher v. Emperor

35 P W R Cr 1913 = 318 P L R 1913= 21 I C 465= 14 Cr L J 593.

2. Evidentiary value.

(g) Miscellaneous.

——First information report— Record prepared at spot— When becomes damaging to prosecution case.

The recording of a report at the spot instead of at the police station seems to be seriously damaging to the prosecution case only where it can be shown that there is a possibility that evidence at the spot has been fabricated by the investigating officer either by manufacturing clues or by procuring the evidence of eye-witnesses who are not likely to have been present at the spot.

Three assailants attacked with weapons a family of which several members were injured and two killed. There were at least seven members of the family present besides the deceased. The question was whether their evidence could be relied on for the purpose of proving that they correctly identified the assailants.

Held that no scope at all existed in the present case for manufacturing evidence and that even if it were to be held that the Assistant Sub-Inspector refrained from writing down the story at the police station and went to the spot to see the situation there for himself before recording the prosecution version it did not seriously affect the

CRIMINAL P. C. (V of 1898), S. 154—2. Evidentiary value—(g) Miscellaneous

strength of the prosecution case or in any way detract from the value of the evidence of the members of the family produced as witnesses. (Khosla and Falshaw JJ.) State v. Indar Singh

AIR 1952 Punj 375=1952 Cr L J 1602.

——First information—Interpretation—Admissibility.

Where the date on the first information report purported to be 1-4-1947, but later on this date was scored and 6-3-1947 was substituted :

Held that the document was inadmissible in evidence. (Bannerjee J. C.) Nathu Ram v. State

AIR 1951 Him Pra 1=52 Cr L J 50.

——First Information Report in case of dacoity — Value of—Evidence Act (1872), Ss. 145, 157.

The first information report in cases of dacoity is not often of value because of the victim's inability to identify the raiders. (Hemeon J.) Ramrao Ekoba v. Crown

AIR 1951 Nag 237= ILR (1951) Nag 349=1952 Nag L J 20=1952 All W R (Sup) 30.

——Facts coming to light before first information report is sent—It is against ordinary human conduct that they should be withheld from report—Where a dead body has been recovered at the instance of the accused, the language used in the first information report would not be so utterly different that it would not be possible on a persual of it to come to that conclusion. (Nawal Kishore and Bapna JJ.) Mt. Nojali v. Sarkar

AIR 1950 Raj 5=51 Cr L J 739.

——Case of rape — F. I. R. not containing allegation of actual rape — Policeman in charge of police out-post unable to write — Informant directed to bring written report — Informant himself illiterate — Some one else writing report for him — Writer not examined as witness —Report not read over to informant — Informant held was not bound by report. (Trivedi J. C.) Bhima Karasan v. The Kutch Government

AIR 1950 Kutch 9=51 Cr L J 396.

——Omissions in.

Omissions in the written reports sent to the Police soon after an offence, such as of the time of murder, etc., which shatter the story subsequently told by the prosecution witnesses, should be seriously considered by the Judge. (Nanavutty and Smith JJ.) Mohammad Anis v. Emperor

AIR 1936 Oudh 405=9 R O 81= 1936 O W N 691= 12 Luck 291=164 I C 482=37 Cr L J 955.

——The proposition that, because a person of the party of the accused goes first to the Police Station and says that some of the complainant's party has committed an offence, the real complaint lodged later on under S. 154 against the accused must be kept off the record save on terms under S. 162, is one which cannot be judicially approved. (Rankin C. J. and C. C. Ghose J.) Osman Gani Mistry v. Emperor

AIR 1930 Cal 130=125 I C 111 = 1930 Cr C 130=31 Cr L J 771.

——Value.

Where complainant previously knew the accused and in the first information report their names are mentioned not as persons who were identified at the spot but only as suspects whose conversation asking others to come that night was overheard the evening before, the inclusion of their names in the first information report, carries no weight. (Addison J.) Mangal Singh v. Emperor

93 I C 892 27 Cr L J 492 (Lah).

——List of stolen property—Map prepared by police.

A list of stolen property handed to a Police Officer in the course of investigation is not admissible in evidence and should not be placed before the jury. The admission of such a list however would not of itself vitiate the trial

CRIMINAL P. C. (V of 1898), S. 154—2. Evidentiary value—(g) Miscellaneous

unless it is shown that the accused have been prejudiced by such admission. Where the names of certain persons are sent to the police as being the names of those who are suspected of being concerned in the commission of an offence and the evidence of the person who supplied these names to the Police is challenged in Court, the list of names supplied by him is admissible in evidence to corroborate his statement. A map which contains upon it certain things which must have been supplied to the Police Officer by some person should not be admitted unless there had been the evidence of the person as to what he said to the officer and the evidence of the Police Officer as to what the person told him. (Greaves and Panton JJ.) Kalla v. Emperor

AIR 1925 Cal 959=85 I C 723=26 Cr L J 579.

2. Evidentiary value.

(h) Non-mention of names of accused.

——Discrepancy in evidence.

Where telegram about murder, given almost immediately after the murder was committed, does not mention the names of the assailants, the omission is a strong circumstance in favour of accused. (Fazl Ali, Mahajan and Chandrasekhara Aiyar JJ.) Wilayat Khan v. State of U. P.

A I R 1953 S C 122 = I L R (1953) 1 All 189 = 1953 Cr L J 662 (SC).

——First information report—Omission of accused's name in, raises doubt as to his identity.

The omission of the name of an accused person in the rukka or first information report raises an element of doubt, however slight, about his identity ; and if such accused is acquitted by the Sessions Judge, the High Court will not interfere with the order of acquittal. (Teja Singh and Mohd. Sharif JJ) Wali Dad v. Emperor,

A I R 1946 Lah 229=221 I C 629=47 Cr L J 225.

——Person not named in First Information Report — Action against if can be taken.

An action need not be confined to persons named in the first information report or charged with taking a direct part in an occurrence. (Dhavle J.) N. L. Carric v. Emperor

A I R 1941 Pat 395=22 P L T 348=7 B R 681 = 13 R P 662=194 I C 94=42 Cr L J 504.

——First information report—Absence of accused's name —Effect.

First information Report is never per se the statement of a case for prosecution and absence of any accused's name and the first information report is not by itself a sufficient proof of his innocence. (Johnstone J.) Ram Kishen v. Emperor,

A I R 1928 Lah 880=111 I C 387=11 A I Cr R 185= 29 Cr L J 835.

——Omission of names of witnesses.

The mere fact that in the first information report the names of the witnesses, who ultimately support the prosecution, are not given, is not a matter which would throw suspicion upon the story for the prosecution. (Shadi Lal C. J. and Agha Haidar J.) Chandu v. Emperor,

A I R 1928 Lah 657=108 I C 370=29 Cr L J 378.

——First information — Name of accused not mentioned —Effect.

The fact that the name of a particular accused was not mentioned in the first information report is not a circumstance in favour of the accused where the informant was not an eye-witness of the occurrence. (Martineau and Campbell v.) Bahadurai v. Emperor,

A I R 1927 Lah 63=99 I C 77=7 A I Cr R 220 = 28 Cr L J 45.

——First information—Accused's name not mentioned— Effect.

CRIMINAL P. C. (V of 1898), S. 154 — 2. Evidentiary value—(h) Non-mention of names of accused

The fact that though the informant in his first report tried his very best to describe the alleged accused, yet he did not mention a particular accused although in his evidence before the Court he says that he knew him before, makes the case against that accused at least doubtful. (Agha Haidar J.) Bachan v. Emperor,

A I R 1927 Lah 149=99 I C 49=28 Cr L J 17.

——Criminal trial—First report—Omission — Track evidence, value of.

Where the first report makes no mention of the offender, and the complainant when questioned named nobody as his assailant the complainant's subsequent statement that he had identified the accused at the time of attack cannot be relied upon. The track evidence of a flimsy nature could not be believed without sufficient corroboration. (Le Rossignol J.) Ronki v. Emperor,

AIR 1915 Lah 469=10 P W R (Cr) 1915=91 P L R 1915=27 I C 846=16 Cr L J 222.

——Importance of first information.

In every criminal case the initial report of an offence is of very great importance. No person whose name has not been mentioned in it as an offender should be convicted especially where in view of the fact that the report was given by a person, who knew all the facts and the persons concerned, a considerable time after the occurrence there was no likelihood of the offender's name being omitted. (Rattigan and Shah Din JJ.) Crown v. Sada,

4 Ind Cas 980=1909 P W R 14 (Cr)=11 Cr L J 99.

2. Evidentiary value

(i)—Non-mention of names of witnesses.

——Ss. 154, 164—Non-mention of names of witnesses in first information report—Effect.

Where the first information report does not name any witnesses but merely says that the whole village had witnessed the occurrence, the evidence of certain independent eye-witnesses who have no interest in any one of the parties in the case, cannot be looked upon with suspicion on the sole ground that they were not named in the first information report. So also the mere fact that the statements of these witnesses had been recorded under S. 164, Criminal P. C., cannot be a ground for rejecting their testimony especially when they had adhered to their statements throughout the trial before the committing Magistrate's Court and the Sessions Court: A I R 1938 Pat 290; 27 Cal 295, Disting. (Wanchoo C. J. add Rinawat J.) Sukhat Singh v. State.

I L R (1951) 1 Raj 712=1952 Ral L W 17.

——First information report—Failure to mention name of witness in—Effect.

The failure of the informant to mention a witness's name in the first information report must be kept in mind by the Court, but is not in itself a sufficient ground for rejecting the testimony of the witness unless the Court could be sure that the witness had some motive for deposing against the accused. (Meredith and Imam JJ) Harit Dusadh v. Emperor,

AIR 1946 Pat 239=24 Pat 715 = 1946 P W N 187=13 B R 171=228 I C 274=48 Cr L J 178

——Witness whose name is not mentioned in First Information Report — Value of evidence of such witness.

Although there may be cases where an omission to state some facts in a First Information Report may be proved and be a relevant matter of significance yet where the witness whose name was not mentioned in the report was herself not present at the Police Station, the mere omission of the reporter who himself was not an eye-witness, in recounting what he heard from an eye-witness cannot possibly lessen the value of the evidence of the witness. (Meredith and Abdul Qadir JJ.) Muhammad Araf v. Emperor,

CRIMINAL P. C. (V of 1898), S. 154 — 2. Evidentiary value—(i) Non-mention of names of witnesses

AIR 1933 Lah 1005 (2) = 6 R L 395=147 I C 409=35 Cr L J 420.

——First information report not containing names of prosecution witnesses — Prosecution story not necessarily suspicious.

The mere fact that in the first information report the names of the witnesses, who ultimately support the prosecution, are not given, is not a matter which would throw suspicion upon the story for the prosecution. (Shadilal C. J. and Agha Haidar J.) Chandu v. Emperor.

AIR 1928 Lah 657=108 I C 370=29 Cr L J 378.

2. Evidentiary value

(j)—No substantive evidence

——Evidentiary value of first information report.

The earliest or first information of the occurrence is highly useful for the purpose of corroborating or contradicting the prosecution version but it cannot, by itself, be substantive evidence or made the basis for a conviction or an acquittal. (Venkata Ramaiya and Balakrishnaiya JJ.) Pedda v. State of Mysore,

AIR 1953 Mys 41 = I L R (1953) Mys 69 = 32 Mys L J 83=1953 All W R (Sup) 78=1953 Cr L J 1001.

——First information report — If condition precedent to investigation — Value of.

The first information report can be put in evidence when the informant is examined, if it is desired, to do so. It is not conclusive evidence against the accused. It can be used for the purpose of testing the truth of the prosecution story. The receipt and recording of it is not a condition precedent to criminal investigation. The value of the first information report will vary according to the character in which the informant will figure in the proceedings: AIR 1945 P C 18, Foll. (Bannerji J. C.) Gopal v. Crown,

AIR 1950 Him-P 18=51 Cr L J 786.

——Value of report.

The first information report is really not a substantive piece of evidence but can be used only for corroborative purposes. (Radha Krishna J.) Waris Khan v. Emperor.

AIR 1940 Oudh 209 = 15 Luck 429 = 1940 A W R 92=1940 O W N 177 = 13 R O 513=193 I C 770=42 Cr L J 483.

——First Information Report, if can take the place of evidence of witnesses.

In a criminal trial, the first information report may be useful in checking statements of witnesses given in Court which have to be taken as the only evidence against the accused. The first information report cannot take the place of that evidence by itself. (Saaduddin A. J. C.) Mohammad Khan v. Emperor,

AIR 1934 Pesh 27=6 R Pesh 68 = 148 I C 1043=35 Cr L J 961.

——The first information report is not substantive evidence in the case, though it can be referred to show how the proceedings were initiated against the accused. (Middleton J. C. and Saaduddin A. J. C.) Nawab Khan v. Emperor,

AIR 1933 Pesh 94 = 6 R Pesh 34=35 P L R 132=147 I I C 572=35 Cr L J 476.

——Evidentiary value.

The First Information Report is not a substantive piece of evidence. It can be used merely by way of corroboration or contradiction and not any further, and is inadmissible for the purpose of proving that the facts stated in it are correct. It cannot be used to contradict other witnesses who are unanimous on a particular fact.

CRIMINAL P. C. (V of 1898), S. 154—2. Evidentiary value—(j) No substantive evidence

It is never per se the statement of the case for the prosecution and the absence of any accused's name in the first information report is not by itself a sufficient proof of his innocence. (Raza and Kisch JJ.) Gajadhar v. Emperor,

AIR 1932 Oudh 99 = 9 O W N 32=Ind Rul (1932) Oudh 195=7 Luck 552=137 I C 79=33 Cr L J 381.

——First information report—By itself not convincing—(Evidence Act (1872), S. 157).

By itself a first information report can hardly be regarded as evidence of a convincing nature. (Pullan J.) Wali Mohammad v. Emperor,

AIR 1930 Oudh 249=126 I C 511=1930 Cr C 569=7 O W N 466=31 Cr L J 1025.

——First information—Use of — (Evidence Act (1872), S. 157).

Use of the first information report as if it were substantive evidence is illegal. (Tek Chand, J.) Sheo Karan v. Emperor,

A I R 1928 Lah 923=10 A I Cr R 497 = 110 I C 590 =29 Cr L J 734.

——Criminal trial—First report—Admissibility of, without proof.

Any statement made by a complainant in his first report is not admissible in evidence without proof and cannot be used against the accused in his trial. (Lindsay, J. C.) Dal v. Emperor,

A I R 1914 Oudh 414=26 I C 654 = 1 O L J 687=16 Cr L J 62.

——Ss. 154 and 155 and Evidence Act, Ss. 145 and 157—First information—Evidentiary value.

The first information is a document of great importance, but is not a piece of substantive evidence and capable of being used as a previous statement to corroborate or contradict its author. (Herbert Carnduff Stephen and Chatterjee, JJ.) Autar Singh v. Emperor,

17 C W N 1213=21 I C 882=14 Cr L J 642.

2. Evidentiary value—

(k) Use as dying declaration.

——First information by a person who is dead—Value of —See Evidence Act (1872), S. 32 (1).

A I R 1953 Madh B 249=1953 Cr L J 1764.

——When admissible as substantive evidence.

Ordinarily, the first information report is proved by the prosecution for the purpose of corroborating the first informant. It may, of course, be used by the defence under the provisions of S. 145, Evidence Act. In such cases, the first information report cannot be treated as substantive evidence. In certain cases, a document of this kind may, conceivably be treated as substantive evidence, for instance, in a case in which the first informant had died as a result of an attack on him, in which case, the first information report would be admissible as substantive evidence under S. 32, Evidence Act. Where almost immediately after filing the first information report, the informant disappears and is, therefore, not available as a witness when the case comes on for trial before the Court and there is nothing to show that the informant is dead, S. 32, Evidence Act, can have no application and the first information report cannot be treated as substantive evidence. (Edgley and Lodge, JJ,) Inchan v. Emperor,

A I R 1943 Cal 647 = 16 R C 446 = 210 I C 322=45 Cr L J 210

——Informant dead—Admissibility of report under S. 32 (1) or S. 8, Evidence Act.

In a case in which the first informant is alive and is examined, the first information report cannot be regarded as substantive evidence; but the position is different in a case in which the first informant is dead. If the first informant had died before the matter comes before the Court, the report is admissible under S. 32 (1) or S. 8, Evidence Act. (Edgley and Mohamad Akram, JJ.) Emperor v. Mohammad Sheikh,

A I R 1943 Cal 74 = ILR (1942) 2 Cal 144 = 15 R C 596=205 I C 92=44 Cr L J 322.

——When admissible.

The first information report, unless the man who made it dies, is not admissible in evidence of any fact which is contained in it; it merely proves that this was the original story which set the Police on motion. (Baguley and Mosely, JJ.) King v. Maung Po Thi,

A I R 1938 Rang 282 = 11 R Rang 72 = 39 Cr L J 771.

——First information report — Not substantive evidence —Use of—(Evidence Act (1872), S. 157).

It is settled law that a first information report is not substantive evidence. It can be used only to corroborate or contradict the deposition of the maker thereof at the trial. It is, however, admissible under S. 32 (1), Evidence Act, as the statement of a person (since deceased) relating to the circumstances of the transaction which resulted in his death. (Tek Chand and Johnstone, JJ.) Kapursingh v. Emperor,

A I R 1930 Lah 450 = 123 I C 120 = 31 P L R 83= 1930 Cr C 554=31 Cr L J 475.

2. Evidentiary value —

(l) Useful for contradiction or corroboration.

——Value of first information report use as corroborative evidence—See ibid, S. 297.

A I R 1953 Cal 602=1953 Cr L J 1377.

——First information report.

The first information report is not a substantive piece of evidence and may be used only for the purposes of corroboration or contradiction. (Sharma, J.) Shanker v. The State,

1953 Raj L W 445.

——Ss. 154 and 297 — Use of first information report — Misdirection.

A first information report is not a piece of substantive evidence; it can be used for corroboration or contradiction of the maker but it cannot be used for corroboration of any other witness or for the case of the prosecution in general. The use that can be made of that report requires the most careful charge to the jury.

Where the Judge in his summing up dealt with each accused and the opening sentence in each case was that his name was or was not mentioned in the first information report and he put the naming of accused in the first information report in the forefront of the evidence against that accused :

'Held' that in dealing with the individual accused the Judge treated the first information report as a piece of substantive evidence against each accused who was named therein. That was very serious misdirection which might have had very disastrous results. (Harries C. J. and S. R. Das Gupta, J.) Gunadhar Das v. State,

A I R 1952 Cal 618=1952 Cr L J 1343.

——First information report—Use of.

Ordinarily speaking, a first information report can be used for corroborating or contradicting the person who actually makes it and not a different person. In certain cases, it has been regarded as a part of the 'res jestae' and the evidence of witnesses other than the person who lodged the first information report has also been sought to be corroborated or contradicted by it. (Chakravartti and Sinha, JJ.) State v. Anil Ranjan Dutta,

A I R 1952 Cal 534=1952 Cr L J 1154.

CRIMINAL P. C. (V of 1898), S. 154—2. Evidentiary value—(1) Useful for contradiction or corroboration ——How to use first information report — Evidence Act (1872), Ss. 145 and 157.

A first information report cannot be used as substantive evidence but can be used only to corroborate or contradict the informant under Ss. 157 and 145, Evidence Act. It cannot be used as substantive evidence to contradict other persons or discredit them. (Shinde and Chaturvedi, JJ.) Pundlik v. State,

A I R 1951 Madh B 72=52 Cr L J 278.

——First information report — Use of, for corroboration and contradiction—Evidence Act (1872), Ss. 145 and 157.

The general diary entry and the first information report cannot be dealt with as substantive evidence. Under S. 157, Evidence Act, they are admissible to corroborate only the testimony of the person who gave the information. They also may be considered for the purpose of contradicting the evidence of such person under S. 145, Evidence Act. (Sen and Chunder JJ.) Kalu Mandal v. The State,

A I R 1950 Cal 412 = 85 C L J 196=51 Cr L J 1507.

——Statement of person recorded by police officer before registering case against accused—Statement not being substantive evidence can be used only for contradicting or corroborating deponent: 53 Mad 590 and A I R 1946 P C 38, Rel. on. (K. T. Koshi and Mathew Muricken JJ.) Thomi Anthoni v. Sirkar Prosecutor,

A I R 1950 Trav-Co 41=1949 K L T 66 = 1949 T-C L R 74=51 Cr L J 988.

——First information report can be used to contradict and corroborate informant.

Though a first information report is not a piece of substantive evidence it can be used not only to contradict but also to corroborate the statement made subsequently by the informant. (Niyogi and Hemeon, JJ.) Maganlal Radhakishan v. Emperor,

A I R 1946 Nag 173=I L R (1946) Nag 126 = 1946 Nag L J 139=47 Cr L J 851.

——First information report is not substantive but corroborative evidence.

The first information report is merely a piece of corroborative evidence or a piece of evidence which may be considered for the purpose of ascertaining whether the story subsequently told is different from the story told at the time when the first information was lodged. (Khundkar and Sen, JJ.) Panchu Sheikh v. Emperor,

A I R 1943 Cal 612=16 R C 436=210 I C 17=45 Cr L J 170.

——Value of report.

It is a grave error of law to say that the value of the first information report is as corroboration of the subsequent depositions of the witnesses referred to in it. (Bartley and Mohamad Akram, JJ.) Abdul Latif v. Emperor,

A I R 1941 Cal 533 = 45 C W N 763=14 R C 247=196 I C 439=42 Cr L J 871.

——Not substantive evidence — Before using them Court should be clear about their relevancy.

Statements made in the first information reports are admissible under S. 155, Evidence Act, to impeach the credit of a witness who made them or under S. 157, to corroborate the testimony of the witnesses who made them if the reports were made about the time when the fact took place or before any authority legally competent to investigate the fact. It may be that there are other sections of the Evidence Act under which these statements may, in certain circumstances, become relevant, but there can be no doubt that they are not substantive evidence in the case and Court should be clear about the relevancy of

CRIMINAL P. C. (V of 1898), S. 154—2. Evidentiary value—(1) Useful for contradiction or corroboration the statements before they use them. (Allsop J.) Ram Naresh v. Emperor,

A I R 1939 All 242 = 1939 A L J 107=1939 A W R 190=11 R A 597=I L R (1939) All 377=181 I C 646=40 Cr L J 559.

——Admissible only to contradict witness.

Statement of the complainant as recorded in Court and in first information report are not substantive evidence and are admissible only to contradict the complainant; but in order to contradict him, they must be specifically put to him. (Pollock A. J. C.) Bhagwantrao v. Emperor,

163 I C 702 (703)=18 N L J 289 = 9 R N 14=37 Cr L J 858.

——Information to Police before investigation, when can be proved.

Though all the information given to the Police before investigation may amount to first information report, it is not correct to conclude that being first information reports, they could necessarily be proved in evidence for all purposes. They can be proved because the person making them is a witness in the case, and they can be proved merely for the purpose of corroborating or contradicting the evidence of that particular person. But if the mere fact that these reports were made is relevant, such fact may be proved and also if the contents of the reports, apart from the truth thereof are relevant, the contents may also be proved even apart from the purpose of corroboration or contradiction. (Middleton J. C. and Mir Ahmad A. J. C.) Mir Rahman v. Emperor,

A I R 1935 Pesh 165=8 R Pesh 92=159 I C 890=37 Cr L J 225.

——Corroborative use of.

A first information report can be used as corroborating only the maker of the report. (Ferrers J. C. and Aston A. J. C.) Misri v. Emperor,

A I R 1934 Sind 100=7 R S 52=151 I C 437=35 Cr L J 1332.

——Ss. 154, 155—Statement in First Information Report and to a headman—Whether substantive evidence.

Statements made by a complainant in the first information report and to the headman are not substantive evidence at all. They can only be used in evidence for the purpose of corroborating or contradicting what the complainant has stated on oath in evidence before the Court. (Dunkley J.) Naga Tun Hlaing v. Emperor,

A I R 1934 Rang 60 (60)=6 R Rang 258=148 I C 876=35 Cr L J 808.

——Limits of.

Statements in first information report can be used for the purpose of corroborating or contradicting a witness but are inadmissible for the purpose of proving that the facts alleged therein are correct. 17 C. W. N. 1213; A. I. R. 1925 All. 303 and A. I. R. 1927 Cal. 17, Foll. (Beasley C. J. and Pandalai J.) Sankaralinga Tevan v. Emperor,

A I R 1930 Mad 632=53 Mad 590=I R 1930 Mad 698 =124 I C 506=1930 M W N 496=3 M Cr C 100=1930 Cr C 632=31 M L W 451=58 M L J 397=31 Cr L J 712.

——First information—Only corroborative value — (Evidence Act (1872), S. 157).

A first information report cannot be used as primary evidence of any fact in dispute but may be treated as corroborative evidence of facts which have to be established in the case. (Sen J.) Imrat v. Emperor,

AIR 1929 All 916=120 I C 199=11 L R A Cr 6=13 A I Cr R 56=1929 Cr C 644=31 Cr L J 7.

——A first information report can only be used to corroborate or contradict under the provisions of Ss. 157 and

CRIMINAL P. C. (V of 1898), S. 154—2. Evidentiary value—(l) Useful for contradiction or corroboration 145, Evidence Act, the person who makes it. It cannot be used as substantive evidence to contradict other persons. A. I. R. 1928 Lah. 17, Foll. (Addison and Dalip Singh JJ.) Gaman v. Emperor,

AIR 1928 Lah 913=116 I C 187=11 L L J 1=12 A I Cr R 453=30 Cr L J 571.

——First information.

A first information under S. 154 is not a statement within S. 162, which is inadmissible in evidence. A. I. R. 1927 Cal. 17, Rel. on. : Such a statement though not substantive evidence can be used to corroborate or contradict its author. 17 C. W. N. 1213, Foll. (Kinkhede A. J. C.) Mohammad Ibrahim v. Emperor,

AIR 1929 Nag 43=112 I C 902=11 A I Cr R 526=30 Cr L J 38.

——Not substantive evidence.

First information report is not substantive evidence and can only be properly used to corroborate or contradict the maker thereof. It cannot be used to contradict numerous other witnessess who are unanimous on a particular fact. A. I. R. 1928 Lah. 17, Ref. to. (Addison and Coldstream JJ.) Dharam Singh v. Emperor,

AIR 1928 Lah 507=9 A I Cr R 567=108 I C 162=29 Cr L J 343.

——Not substantive evidence.

First information report is not substantive evidence by itself, but it can only be used under S. 157 as a previous statement to corroborate or contradict a statement made subsequently in Court. (Shadi Lal C. J. and Zafar Ali J.) Choghatta v. Emperor,

A I R 1926 Lah 179=91 I C 697=27 Cr L J 121.

——The first information report is not a substantive piece of evidence, it can be used merely by way of corroboration or as a contradiction and not any further. (Sulaiman J.) Chittar Singh v. Emperor,

AIR 1925 All 303=85 I C 650=23 A L J 14=47 All 280=26 Cr L J 554.

——First information report is not substantive evidence of the facts recorded in them and conviction cannot be based on such reports. They can be used to corroborate the witnesses who made them and are of value showing that they told the same story at the first possible occasion. If they tell a different story in Court, the report can be used to contradict them or discredit their testimony. But it is not legitimate for a Court, when witnesses tell a different story in the witness box and contradict the report made by them, to discard the evidence given on oath and to rely on the report. (Ryves J.) Jamaluddin v. King Emperor,

AIR 1924 All 164=74 I C 416=24 Cr L J 812.

3. False complaints.

See also PENAL CODE, S. 211.

——Complaint to police—Report forwarded to Magistrate under S. 173—Order passed by Magistrate is judicial and not merely administrative — Therefore, if a complaint is held to be false, the Magistrate is required to file a complaint in respect of offence under S. 211, Penal Code—See ibid, S. 195 (1) (b),

AIR 1952 Sau 67=1952 Cr L J 1084.

——Information to Police Officer amounting to complaint of cognisable offence—Information not reduced to writing —Subsequent complaint by accused — Complaint found false—Prosecution of accused under S. 211, I. P. C. :

Held that the complaint by the accused amounted to a statement made in Police investigation and cannot be made a foundation of a prosecution under S. 211, I. P. C. (King J.) Subba Reddi v. Emperor,

AIR 1936 Mad 160=1935 M W N 1197=43 L W 261=8 R M 737=160 I C 988=37 Cr L J 357.

CRIMINAL P. C. (V of 1898), S. 154 — 3. False complaints

——Information to village magistrate — Information found false — Offence under S. 211, Penal Code — See Penal Code S. 211,

9 Cr L J 170 (Mad) (FB).

——Giving false information to village Magistrate — See Penal Code (1860), S. 182,

28 Mad 565=3 Cr L J 108.

4. First information by accused.

——First information by accused—How far admissible in evidence—Evidence Act (1872), S. 25.

AIR 1952 Pepsu 98=1952 Cr L J 1090.

——First information by accused also containing confession—Relevancy of—(Evidence Act (1872), Ss. 25, 26).

Accused surrendering himself at police station with blood stained axe in hand and blood stained clothes—First information by accused that he had murdered his wife with the axe—That portion of F. I. R. which amounted to pure confession of guilt must be rejected from evidence—But F. I. R. will be relevant as showing conduct of accused and also admissions which did not amount to confession. (Mehta and Khan JJ.) Bhagwan v. State,

1952 Madh B L J 393.

——First information by accused — Admissibility — Evidence Act (1872), Ss. 25 and 27.

The accused murdered his brother with an axe and himself reported the matter to the police. The first part part of the first information report described the events which led to the murder, the second part dealt with the murder proper while the third part dealt with subsequent events giving information to the police as to where he had hidden the blood stained axe. The axe was recovered in consequence of this information :

Held, that the whole of the first information report need not be excluded from evidence but merely the confessional part of it should be excluded. The part which dealt with opportunity and motive for crime was admissible in evidence. The third part was also admissible under S. 27, Evidence Act : A I R 1941 Nag 86, Rel. on; A I R 1935 Bom 26, Disting. (Oak J. C.) Panna v. The State,

AIR 1950 Ajmer 75.

——Ss. 154, 233 — Counter cases — F. I. R. in one case —Admissibility in counter case.

Where an occurrence forms the subject of two cross cases, the first information report in one case is admissible in the counter case in which the informants themselves stand their trial, though in every case the entire statement may not be admissible : AIR 1917 P C 25, Rel. on; A I R 1945 Sind 132 and A I R 1948 Lah 19, Ref. (K. T. Koshi and Mathew Muricken JJ.) Sebastian Devid v. Sirkar Prosecutor,

AIR 1950 Trav-Co 9=51 Cr L J 648.

——First information report by accused — Report is admissible against the accused if it does not amount to a confessional statement : AIR 1917 P C 25, Rel. on. (Wali Uliah J.) Bodham v. Emperor,

AIR 1948 All 223=1947 A L J 673=1948 A W R H C 12=1948 O A H C 12=49 Cr L J 436.

——First information by accused—Admissibility.

A first information report which amounts to a confession is not admissible as being a confession made to a police officer, but a report not amounting to a confession can be admitted in evidence. At the same time a report of the latter kind cannot, since the maker is an accused person and not a witness, be treated as evidence against any co-accused. Where the report made by the accused

CRIMINAL P. C. (V of 1898), S. 154 — 4. First information by accused

was exculpatory, so far as he himself was concerned, it was held that though the report was admissible in evidence it could not be treated as a piece of evidence to corroborate the case against the other co-accused. (Cornelius and Falshaw JJ.) Mohammada v. Emperor,

AIR 1948 Lah 19=49 P L R 182=1947 A W R Sup 52 (3)=1947 O A Sup 52 (3)=48 Cr L J 962.

——First information report by accused.

Where first information report is made by the accused, statements therein which do not amount to confession can be used against the accused. (Davis C. J. and O'Sullivan, J.) Gopal Das Shivalomal v. Emperor,

A I R 1945 Sind 132 (144)=I L R (1944) Kar 456=1946 Sind Rul 45=221 I C 358 = 47 Cr L J 159.

——It sometimes happens that after the first information has been laid against the accused, a counter information is laid against the complainant or his party by a member of the accused's party who is not himself an accused. As this comes under S. 154, and must be reduced to writing and signed, it cannot come within S. 162. Whether it is admissible at the trial of the accused will depend upon circumstances and must be decided under Evidence Act. The police cannot of course treat statements as informations unless they are really received as such and come truly and properly within S. 154. (Rankin and Duval JJ.) Azimaddy v. Emperor,

AIR 1927 Cal 17=99 I C 227=44 C L J 253=54 Cal 237=28 Cr L J 99.

——A statement made by the accused implicating himself and others cannot be called 'first information report' so far as he is concerned. (Walsh J.) Subedar v. Emperor,

AIR 1924 All 207=77 IC 890=4 L R A Cr 210 = 25 Cr L J 490.

——Admissibiltty of fresh report by accused.

A fresh report made by an accused is inadmissible in evidence and cannot be used against him at all, and a conviction based on such report is illegal. (Scott-Smith and Le Rossignal JJ.) Harji v. Emperor,

AIR 1918 Lah 69=4 P R Cr 1918=134 P L R 1918 45 I C 273=19 Cr L J 513.

5. Granting copies.

——Accused should be given copy of first information report when complainant is being examined.

In fairness, counsel for the accused ought to be supplied with a copy of the first information report when the complainant is giving her evidence because the first information report would supply strong material for cross-examination on several points. (Beaumont C. J., N. J. Wadia and Wassoodew JJ.) Emperor v. Mahadeo Tatya,

A I R 1942 Bom 121=44 Bom L R 216=15 R B 1=200 I C 261=43 Cr L J 621 (FB).

——Ss. 154, 548—Accused, if entitled to copies.

A first report stands more or less on the same footing as a complaint made directly to a Magistrate. It is a very valuable document and the accused is entitled to know what was said in that report to connect him with the offence, so that he may be in a position to protect his interest by cross-examining the prosecution witnesses with reference to additions and alterations in the story which might subsequently be made in evidence. (Rupchand J. C. and Lobo A. J. C.) Bherumal Khanchand v. Emperor,

A I R 1937 Sind 303 = 10 R S 134=171 I C 993=39 Cr L J 57.

——Court's duty—First information—Copies of — To be granted to accused—Duty of Local Government.

An accused person should be granted a copy of the first information at the earliest possible stage in order that he may get the benefit of legal advice. The Local Government should give facility to accused persons to obtain copies from the police of first information before the trial commences in the Magistrate's Court. (Chapman J.) Dhanpat Singh v. Emperor,

CRIMINAL P. C. (V of 1898), S. 154 — 5. Granting copies

A I R 1917 Pat 625 = 2 Pat L W 188=42 I C 598=1917 Pat H C C 297=18 Cr L J 982.

—6. Information in a non-cognizable offence.

See Criminal P. C., S. 155.

7. Officer in charge of police station.

——First information.

A verbal report of the occurrence of an offence made to the Tahsildar who casually happened to be in the village cannot be the first information report because under S. 154 a first information report is a report which is made to an officer in charge of a police station. (Asthana J.) Nardeo Singh v. State,

AIR 1953 All 726=1953 All L J 408=1953 All W R (H C) 399=1953 Cr L J 1677.

——Officer in charge of police station.

First information given to the Police Patel who writes a report and gives it to the complainant to be delivered to the Sub-Inspector is not technically a first information report as it is not made to an officer in charge of a Police Station. (Divatia C. J. and Trivedi J.) Ramji Shina v. United State of Saurashtra,

AIR 1950 Sau 11=3 Sau L R 59 (61).

——Police outposts in Sind—Officers-in-charge of, are not Police Officers within S. 154.

It is the custom in Sind, where distances are so great that it is not possible to establish Police Stations in remote places, to establish Police outposts. These outposts are not in charge of Police Officers within the meaning of S. 154, Criminal P. C., and the Police Officers are not, therefore, formally empowered to record first information report. When a first informant comes to such a Police outpost, the head-constable-in-charge gives him a chit and sends him to the Police Station proper for the proper recording of a complaint or first information. Therefore, while it may be said that a statement made by a first informant to a Police Officer at such an outpost can be admitted as evidence for the purpose of corroboration under S. 157, Evidence Act, as can be a first information under S. 154, Criminal P. C., it cannot be given the same weight. (Davis C. J. and O'Sullivan J.) Emperor v. Kaku Mashghul,

AIR 1944 Sind 33=I L R (1944) Kar 123=17 R S 1=212 I C 467=45 Cr L J 650.

——Officer in charge.

Assistant Sub-Inspector on duty in mofussil during investigation is not officer-in-charge of the police station for purposes of S. 154 when the first information report is made to him unless he comes within the strict terms of S. 4. (C. C. Ghose and Jack JJ.) Momin Taluqdar v. Emperor,

AIR 1928 Cal 771=117 I C 601=30 Cr L J 803.

8. Procedure in admitting

——Prosecution neither producing person who went to report at the Thana nor the man who wrote out the report at the Thana — Court cannot refer to the first information report. (K. N. Wanchoo C. J. and K. L. Bapna J.) State v. Gajraj

AIR 1953 Raj 66 =1953 R L W 123 = ILR (1952) 2 Raj 910=1953 Cr L J 577.

——Whether reasons should be given for its admittance.

It is not proper for the Judge to give his reasons for admitting the document (first information report) in evidence. He should merely state that he admits the docu-

CRIMINAL P. C. (V of 1898), S. 154 — 8. Procedure in admitting

ment in evidence and lays it before the jury. (M. C. Ghose and Bartley JJ.) Ebadi Khan v. Emperor

AIR 1938 Cal 460 = 11 R C 36 = 176 I C 104 = 39 Cr L J 674.

——Whether substantive evidence.

The earliest version of an occurrence, as given by an informant or prosecutrix who is the principal witness to the occurrence, and on whose testimony practically the whole case depends, has always to be placed before the jury in order to judge of the truth or falsity of the prosecution case. (Bose A. J. C.) Abdul Aziz v. Emperor

AIR 1934 Nag 94= 6 R N 229 = 30 Nag L R 262 = 149 I C 447=35 Cr L J 957.

——In admitting first information reports in evidence, the procedure laid down in S. 145, Evidence Act, must be strictly followed. (Dalip Singh J. on difference of opinion between Harrison and Agha Haidar J.) Mahla Singh v. Emperor

AIR 1931 Lah 38=Ind Rul (1931) Lah 282=32 P L R 259=130 I C 410=32 Cr L J 522.

——Prosecution—Bound to produce—But not bound by it.

The prosecution is bound by practice to produce in Court the First Information Report made to the police but it is not bound to refrain from leading evidence that the report is not accurate. To hold that the prosecution is tied down tightly to the words of the First Information Report would recognise the recording officer as possessing an authority which in no way belongs to him and would be more dangerous. (Campbell J.) Raja v. Emperor

AIR 1924 Lah 591=77 I C 817=25 Cr L J 465.

——Ss. 154 and 157 — Cognisable offence outside station —Procedure.

There is no specific provision in the Criminal P. C, regarding procedure to be followed by Station House Officer receiving information of a cognisable offence outside his station limits, but S. 154 does not prevent his receiving and recording the information though he has no power to investigate under S. 157. 'Information received' in S. 157 of the Code refers to information furnished and recorded under S. 154. (28 Mad 565; 31 Mad 506; 32 Mad 258 Dist.) (Sankaran Nair and Ayling JJ.) In re Nand Mnni Ana

AIR 1915 Mad 312=1 L W 355=(1914) M W N 382 =25 I C 630=15 Cr L J 622.

9. Recording of information.

——First information report in case of dacoity — Penal Code (1860), S. 395.

It is not necessary that the F. I. R, should specify every little detail and describe the specific part played by each one of the dacoits when many of them enter into the house and commit dacoity. (Jagannadhadas and Panigrahi JJ.) Suka Misra v. The State

AIR 1951 Orissa 71.

——Language of first information report.

——It would be always safe if the police officers would take down the report in the language in which it is made under S. 154, Criminal P. C., so as to avoid any chances of error. (Ranawat J.) Shriram v. State

1951 Raj L W 417.

——Ss. 154, 162—Written report of cognizable offence — Statement of person bringing report recorded by investigating officer—Statement when admissible in evidence.

Per Bapna J. — When a written report is presented it is not necessary to record the statement of the person bringing the report but if investigating officer chooses to do so, it is part of the investigation, unless of course the report does not disclose any offence and the statement is taken to find out if any offence had been made out, in

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which case, however, it will be the statement which would become the first information report,

Per Bhardwaj J.—Unless and until a police officer takes an active step to start an investigation, however small that active step may be, the investigation cannot be said to have commenced. Whenever a person goes to the police station to lodge any information relating to the commission of a cognizable offence, it is the duty of the police officer in charge of the police station, to take down the information at once, as nearly as possible in the informant's own words, and to further elicit by interrogation, any other information which may be necessary in the case. If the information is tendered in writing, and the person tendering is personally acquainted with the facts of the case, it becomes all the more a duty of the police officer, in charge of the police station, to whom the written report is tendered, to take down the oral statement of the person tendering it, specially when he himself seems willing to state the facts orally; the mere incident that the written report is presented, does not make it unnecessary to take down the information from the reporter's own lips. The latter oral statement recorded by the police officer will be as much admissible in the case as the written report tendered by him, although it will be for the Court to see, as to what weight should be attached to it. (Bapna and Bhardwaj JJ.) Chandi Dan v. The State

1951 Raj L W 46.

——Details of complaint given in first information book and case diary —They may not be recorded in the general diary.

According to Madras Police Standing Order No. 696 when details of complaints and the names of all the accused in cognizable offences are already given in the first information book and the case diary, they need not be recorded in the general diary. (Govindarajachari and Mack JJ.) In re Subbaratnam

AIR 1949 Mad 663= 1949 M W N 17=1949-1 M L J 152=50 Cr L J 950.

——Whether condition precedent to investigation.

In the case of cognizable offence, the receipt and recording of an information report is not a condition precedent to the setting in motion of a criminal investigation. No doubt, in the great majority of cases, criminal prosecutions are undertaken as a result of information received and recorded in this way, but there is no reason why the Police, if in possession through their own knowledge or by means of credible, though informal, intelligence which genuinely leads them to the belief that a cognizable offence has been committed, should not, of their own motion, undertake an investigation into the truth of the matters alleged. (Lords Chancellor (Viscount Simon, Porter, Simonds, Goddard and Sir Madhavan Nair) King-Emperor v. Nazir Ahmad

AIR 1945 P C 18 =1945 A L J 47=11 B R 180 = 26 P L T 56=47 Bom L R 245 =17 R P C 51 = 80 C L J 19=1945 O W N 258=ILR (1945) Lah 1=1945 A W R (P C) 21 =ILR (1945) Kar (P C) 89 Sup = 217 I C 1= 49 Cal W N 191=1945 Mad W N 49=(1945) 1 Mad LJ 86=58 Mad L W 57=71 I A 203=46 Cr L J 413 (PC).

——Information orally given not reduced to writing by Police Officer — Police Officer held acted in an irregular way. (Cunliffe and Henderson JJ.) Sahedali Mirdha v. Emperor

AIR 1937 Cal 309 = ILR (1937) 2 Cal 308 = 10 R C 258=171 I C 269=38 Cr L J 1067.

——Failure to observe procedure laid down in S. 154, Criminal P. C.

The Legislature has laid down procedure to be observed in recording first information; but whether that proce-

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dure be adopted or not does not affect the question of admissibility in evidence. It is merely laid down so that a statement which would normally be proved in evidence, shall be producible in a form establishing that it was in fact made by the person alleged to have made it. The great importance attached by all Judicial Courts to the proving of first information reports is based upon the desirability of testing the statements of witnesses by a reference to statements made by them soon after the occurrence when their memories were fresh and at a time when it is unlikely that they had had opportunities of fabrication. Failure by the Police to observe the procedure laid down in S. 154, Criminal P. C., does not make the former statement inadmissible; it merely renders it more difficult to prove that it was actually made by the person said to have made it, and thereby, renders it a less certain means of corroborating or contradicting his evidence in Court. (Middleton J. C. and Mir Ahmad A. J. C.) Mir Rahman v. Emperor

AIR 1935 Pesh 165=8 R Pesh 92=159 I C 890 = 37 Cr L J 225.

——Facts which are not true not to be reported.

It is a very serious thing for a Police Officer to record in the first report facts which are not true, and it is still more serious for him to attempt to support the first report by evidence which is not true. (Ferrers J. C. and Rupchand A. J. C.) Emperor v. Mahomed Khabar

AIR 1934 Sind 6 = 6 R S 196 = 148 I C 672 = 35 Cr L J 736.

——Omission to record in writing.

Chapters XIII and XIV are not mutually exclusive. The preventive action started under Chap. XIII may lapse into investigation under Chapter XIV.

The conditions as to the recording of an information under S. 154, Criminal P. C., are first, that it must be an information and secondly, it must relate to a cognizable offence on the face of it and not merely in the light of subsequent events. The mere fact that an information is first in point of time is not sufficient.

The conditions as to writing are merely procedural and if there is an "information relating to the commission of a cognizable offence" it falls under S. 154, and becomes admissible in evidence as such even though the Police Officer may have neglected to record it in accordance with law.

When more than one person goes to the Police Officer at the same time and makes statements relating to the same offence and the Police Officer records one statement as an information under S. 154 and then records other statements, they will be in the nature of statements in the course of the investigation.

Although investigation must in the nature of things follow the information, it is not correct to say that the fact of the officer starting an investigation is the sole criterion of a first information under S. 154, because there can be investigation without any information.

Whether an information 'relates to' the commission of a cognizable offence depends, not even on what the Police Officer thinks, but on what the informant says. By the word "relating" is meant that there need not be complete or satisfactory proof or evidence given at the time : it is sufficient if it indicates that a cognizable offence has been committed. But until there is this indication, it cannot be said that the information is one "relating to" such an offence. (Lort-Williams and S. K. Ghose JJ.) Mani Mohan Ghose v. Emperor,

A I R 1931 Cal 745=58 Cal 1312 = 35 C W N 623= Ind Rul (1932) Cal 97=135 I C 289=33 Cr L J 138.

——Omission to enter First Information in Station Diary.

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Omission to enter the First Information in the Station Diary as required by S. 154, Criminal P. C., could have an important bearing if the date of the report was in question but is not an illegality which vitiates the trial. (Courtney-Terrell C. J. and Adami J.) Hafiz Mohammad v. Emperor,

A I R 1931 Pat 150=12 P L T 393 = 131 I C 17=32 Cr L J 638.

10. What is first information report.

(a) Casual statements.
(b) Information before commission of offence.
(c) Information during investigation.
(d) Information first in point of time.
(e) Sufficiency of information.
(f) Telepone or telegram messages.

10. What is first information report—

(a) Casual statements.

——First information—Statement made to police.

A statement casually made to a Sub-Inspector of Police is not first information and cannot be relied on as such. (Coutts and Dass JJ.) Dasrath Singh v. Emperor,

A I R 1923 Pat 158=67 I C 502=1 Pat L R 192 (Cr) =23 Cr L J 406.

10. What is first information report—

(b) Information before commission of offence.

——Information about projected dacoity.

It is not correct to say that if an "informer" gives information about a projected dacoity or other offence, such information amounts to an information relating to a cognizable crime and as such it attracts the application of S. 154. It is not incumbent in such a case on the Police Officer to reduce into writing whatever information he gathered from the informer. (Wali Ullah J.) State v. Janardan,

1951 A L J 466.

——Report of Police Sub-Inspector to his superior that certain persons were going to commit dacoity—Source of information not disclosed—Whether first information.

The report made by the Police Sub-Inspector to his superiors that certain suspected persons were going to commit dacoity cannot be used as a sort of first information, if the Sub-Inspector has not in his report disclosed the source of his information, and the mere fact that he says that somebody told him that certain persons were going to commit a dacoity is no evidence at all against those persons. If the Sub-Inspector of Police wanted to prove as against the accused, the information which he had received, he would be bound to give evidence as to the source of his information, and to call his informant. (Beaumont C. J. and Sen J.) Biram Sardar v. Emperor,

A I R 1941 Bom 146=43 Bom L R 157=ILR (1941) Bom 333=13 R B 359=194 I C 122=42 Cr L J 519.

——First information—Statement that mob was passing by.

A statement by a person, stating that he saw a mob of men armed with lathis, garasas and swords going towards a certain place, made before any offence was committed and not giving any information of any offence having been committed is not a first information of any offence that was subsequently committed by the mob. (Adami J.) Arjun Kurmi v. Emperor,

A I R 1927 Pat 100=99 I C 109=8 P L T 166 = 28 Cr L J 77.

10. What is first information report—

(c) Information during investigation.

——First information report—Information after starting investigation.

CRIMINAL P. C. (V of 1898), S. 154 — 10. What is first information report—(c) Information etc.

A statement recorded after investigation had started and coming within the mischief of S. 162, is not a valid first information report at all. When on receiving information of a cognizable offence the Sub-Inspector has started for a village in order to investigate the cognizable case, it is not open to him after starting investigation to collect information and then select and collate and bring into existence a document on the morning of next day in order to suit the theory which he has formed in the case. This disguising of a statement under S. 162, as a first information report is to be condemned. (Ramaswami J.) Narayana Reddi v. State,

A I R 1952 Mad 821=65 M L W 238=1952 M W N 369=1952 Mad W N (Cr) 81= 1952-2 M L J 7 = 1953 Cr L J 29.

——Ss. 154 and 162 — Sub-Inspector taking down witness's statement during course of investigation — Statement is recorded under S. 162 and not under S. 154 and, therefore, is inadmissible in evidence. (J. S. Ranawat and D. S. Dave JJ.) Lila Dhar v. The State,

I L R (1952) 2 Raj 1031=1953 Raj L W 348.

——Ss. 154 and 162—Statement to police officer — Test to determine whether first information or statement made during course of investigation — Admissibility of statement—(Evidence Act (1872), S. 25).

Section 162, Criminal P. C., prohibits the use of a statement made to a police officer during the course of an investigation. But there is no bar to the admissibility of a statement which forms information to the police provided, that if it happens to be the statement of a person subsequently accused, it does not amount to a confession.

Whether a statement falls under the category of first information reports or under the category of statements made to police officers during the course of investigation must necessarily depend upon the facts and circumstances of each case. The mere fact that the police officer goes to the spot on hearing of an occurrence does not necessarily mark the commencement of an investigation. Nor does the fact that a statement was made after the investigation was commenced by a police officer made the statement one that was made to him during the course of an investigation. If in fact no investigation has been started, no statement made to a police officer can fall under the mischief of S. 162, Criminal P. C. If the investigation has started, a statement will or will not be statement barred by that section according as it is or is not made "as a step in or in conscious prosecution of the investigation itself." (Chowdhry J. C.) Ranjit Singh v. State,

A I R 1952 Him Pra 81=1952 Cr L J 1720.

——Ss. 154, 156, 161 and 162 — Statements during investigation.

The Code recognises that an investigation may proceed as a result of an information lodged under S. 154 and also that an investigation may proceed by reason of some other material which is in the possession of the police. Where the police started investigation under S. 156 upon receipt of the telephonic message, that telephonic message was not a first information report, inasmuch as it did not comply with the provisions of S. 154, but it furnished materials to the police for action and the police upon those materials commenced investigation under S. 156. Thereafter, list of articles stolen was given to the police. Hence, that information comes within the mischief of Ss. 161 and 162 of the Code and is inadmissible in evidence on behalf of the prosecution : Case law ref. (Sen and Chunder JJ.) Chandrama Prasad Chammar v. State,

I L R (1951) 1 Cal 539.

——What is first information—Statement made to police

CRIMINAL P. C. (V of 1898), S. 154 — 10. What is first information report—(c) Information etc.

after investigation of offence had commenced upon information : See ibid, S. 162,

A I R 1949 All 291=50 Cr L J 498.

——Entry in daily diary of thana before recording of first information report—Admissibility in evidence.

An entry made at the instance of a Sub-Inspector before the recording of the first information report in the daily diary of the thana, mentioning the names of some of the accused alleged to have been given to him by one of the persons alleged to have been assaulted and injured is a part of the proceedings of the police and not the first information report and is consequently inadmissible in evidence for any purpose in Court. (Tek Chand and Ram Lall JJ.) Ahman v. Emperor,

A I R 1938 Lah 787=40 P L R 697 = 11 R L 697= 180 I C 507=40 Cr L J 435.

——All information given to Police before investigation whether amounts to First Information Report.

The term "first information report" is not defined in the Criminal P. C., but is universally held to cover information of a nature referred to in S. 154, Criminal P. C. Section 154, Criminal P. C., does not necessarily contemplate that only one information of a crime should be recorded as a first information report and that all information given to the Police before investigation is started, may amount to first information within the meaning of that section.

Statements given to the Police in connection with the commission of a cognizable offence, fall under two heads, those given before the commencement of investigation and those during the investigation.

Under the general rules of evidence, no such statement can be used at a trial as substantive evidence, that is to say, no such statement is evidence of the truth of its contents ; under the same general rules of evidence all such statements can be used at the trial either to corroborate or contradict the evidence of the witnesses at the trial who had previously made them but by a special rule, such statements, if made during the course of investigation, cannot be used for any purpose. The question whether a statement made to the Police is or is not a first information report or has or has not been recorded in the manner laid down by S. 154, Criminal P. C., is not of primary importance. What is of importance is whether such statements were made prior to the commencement of investigation. If so, they can be proved for purposes of contradiction or corroboration but not for any other purpose. (Middleton J. C. and Mir Ahmad A. J. C.) Mir Rahman v. Emperor.

A I R 1935 Pesh 165 (167, 168)=8 R Pesh 92 = 159 I C 890=37 Cr L J 225 (DB).

——A statement made to the Police after the police have commenced an investigation should not be treated as a first information and should be inadmissible except for the purposes mentioned in S. 162. 1 P L T 491 and A.I R 1922 Pat 535, Cons. ; A I R 1923 Pat 550, Foll. (Adami and Wort JJ.) Habib Khan v. Emperor

AIR 1928 Pat 634=110 I C 584=29 Cr L J 728.

——A ruqa drawn up by a police officer during investigation embodying the substance of the report of the complainant previously made and some result of the investigation made by him and neither signed nor thumb-marked by the complainant cannot fall within the definition of "first information." (Shadi Lal C. J. and Zafar Ali J.) Choghatta v. Emperor

AIR 1926 Lah 179=91 I C 697=27 Cr L J 121.

——'Information' —What is.

CRIMINAL P. C. (V of 1898), S. 154 — 10. What is first information report—(c) Information etc.

A statement by a witness to the police officer in the course of an investigation under Ch. 14 of the Criminal P. C., and recorded under S. 161, Criminal P. C., is not information given to the Police under S. 154 and, therefore, even if it is false, the witness is not liable to be prosecuted under Penal Code S. 182, Rat. Un. Cr. C, 124 Ref. (Maung Ba J.) Sultan v. C. De M. Welbourne

AIR 1925 Rang 364=90 I C 316=4 Bur L J 261 = 3 Rang 577=26 Cr L J 1532.

——A statement made by a witness during investigation after the police officer has actually arrived on the scene and himself seen what has happened, is not first information. (Sulaiman J.) Chittar Singh v. Emperor

AIR 1925 All 303=85 I C 650=23 A L J 14 = 47 All 280=26 Cr L J 554.

10. What is first information report —

(d) Information first in point of time.

——Complaint to Superintendent of Police giving one version of incident — Another version in statement to police during investigation — Latter version found true—Court cannot treat the latter version as first information report. (Wanchoo C. J.) Jago v. State

AIR 1953 Raj 117=1952 R L W 194=I L R (1952) 2 Raj 341=1953 Cr L J 835.

——Ss. 154 and 162—Police informed of offence of robbery —On arriving at spot, Sub Inspector finding that person was wounded—Sub-Inspector recording dying declaration of persons who subsequently died — Simultaneously with dying declaration, deceased's wife giving list of stolen property — Dying declaration held was first information report and list of stolen property did not come within prohibition of S. 162. (Bannerjee J. C.) Nathu Ram v. State.

AIR 1951 Him Pra 1=52 Cr L J 50.

——First information report — Meaning — More reports than one —Admissibility.

Section 154 does not say that the first information recorded with regard to the commission of an offence, will be considered to be the only F. I. R. in the case—Hence, all statements whether one, two or three, relating to the commission of a cognisable offence, made to the police, before the commencement of the investigation, are admissible in evidence at an enquiry or trial for the purposes of corroboration or contradiction. All such statements can very well be designated as first information reports. (Keshom Chandra Gupta and Trilochan Dutt JJ.) Sheo Dan Ram Dan v. State

1951 Raj L W 105.

——First information report.

An Information first in point of time is not necessarily the first information report. (Tribeni Saran A. J. C.) Roshan Khan v. The State.

1950 A W R (Sup) 86 (Kutch).

——Upon first information report of Chaukidar Police starting investigation and sending dead body for post mortem — Subsequent statement of the wife of the deceased cannot be treated as first information —Statement not admissible under S. 162—See ibid, S. 162

AIR 1949 All 291=50 Cr L J 498.

——Ss. 154 and 162—H receiving lathi blows—Chaukidar C of another village making report to police — Police not recording it but immediately proceeding to village where H was attacked and recording H's statement — C's statement held first information report — H's statement held inadmissible under S. 162.

If the circumstances indicate that after receiving some information, however incomplete, the police officer had commenced his investigation any subsequent information

CRIMINAL P. C. (V of 1898), S. 154 — 10. What is first information report—(d) Information etc.

given to him about the offence by any other person cannot be regarded as the first information report in the case and would not be admissible under S. 162.

One H was struck with lathis and received several injuries. H could not go to the thana on account of these injuries and C who was a chaukidar living in another village was informed on the following morning. C went to another village and there gave information to the police officer and gave him the names of the assailants. This report was however not recorded by the police officer. The police officer immediately proceeded to the village where H was attacked and recorded H's statement :

Held, that the fact that C's statement was not recorded by the police officer was no reason why the information given to him by C should not be regarded as the first information report. C's statement was therefore the first information report and H's statement having been made during the course of investigation by the police officer was inadmissible in evidence under S. 162 : A I R 1940 Oudh 60, Disting. (Mathur and Harish Chandra JJ,) Moti Singh v. Emperor,

AIR 1948 All 289=1948 A L J 63=1948 A W R HC 71=1948 OAHC 71=ILR 1948 All 119=49 Cr L J 367.

——Ss. 154 and 162—Report about commission of offence given to police at two different places by two different persons — Report later in point of time is independent of first information report.

Where a report about the commission of an offence is given to the police at two different places by two different persons, and one is earlie in point of time than the other, the later report is not a statement made to a police officer in the course of investigation but is an independent first information report and, therefore, can be used in evidence by the prosecution.

Even if, however, if cannot be held to be a first information report, it can be regarded as a statement made to a police officer in the course of an investigation and unless otherwise incurably inadmissible can be made available to the accused to contradict its maker. (Niyogi and Hemeon JJ.) Magan Lal Radha Kishan v. Emperor.

AIR 1946 Nag 173=ILR (1946) Nag 126=1946 Nag L J 139=47 Cr L J 851.

——Two reports of offence in two places — One later in time, if to be excluded.

Where two different persons give at two different places a report about the commission of an offence and one of them is earlier in point of time, the later one should not be excluded as a statement made to a Police Officer under S. 164, Criminal P. C., as it is not a statement made to a Police Officer in the course of investigation but is an independent first information report. It can be used in evidence by the prosecution. (Varma and Rowland JJ.) Emperor v. Lalji Rai.

AIR 1936 Pat 11=8 R P 344= 16 P L T 730=2 B R 180=160 I C 181=37 Cr L J 235.

——Ss. 154, 162—Chowkidar's report—Subsequent statement to police by inmate of the house—First information which is —Value of the statement.

Where the chowkidar had made a report and a person who resided in the house where the offence was committed subsequently gave a statement to the police. Held that the chowkidar's report and not the statement of the witness constituted the first information report. The witnesses' statement could not be used by the Crown for any purpose and could only be used by the defence as a basis for cross examination. (Boys and Young JJ.) Abdul Jalil Khan v. Emperor.

AIR 1930 All 746=1930 A L J 1105=1930 Cr C 1002 =128 I C 593=32 Cr L J 152.

CRIMINAL P. C. (V of 1898), S. 154 — 10. What is first information report—(d) Information, etc.

——First informant—Failure to produce as witness is bad —Penal Code, S. 302.

The failure to record the statement of the first informant and his non-production before the Sessions Judge has the serious consequence of depriving the accused of the right of cross-examination which will make the case of the prosecution suspicious. The recording of the statement of the second informant does not make him the first informant. (Coutts and Ross JJ.) Chandrikha Ram v. Emperor.

AIR 1922 Pat 535 = 1 Pat 401 = 3 Pat L T 771=71 I C 353 = 1 Pat L R Cr 77 = 1923 Pat H C C 26 = 24 Cr L J 129.

—— First informamation—What is—Information drawn by a Police Officer—Settled by attorney if first information.

A statement recorded several days after the occurrence after there has been some development is no first information and so an information drawn by a Police Officer and finally settled by an attorney is not a first information. (Fletcher J.) Peary Mohandas v. Weston

16 C W N 145=13 I C 721=13 Cr L J 65.

——First information report—What is.

The information which is to be treated as the first information in a case is the information that is really given to the police first in point of time, and not the information which the police may select and record as the first information. (Banerjee and Handley JJ.) Emperor v. Din Bandhu Moitra

8 C W N 218=1 Cr L J 62.

10. What is first information report —

(e) Sufficiency of information

——First information report — Omission to mention names of witnesses.

Where the informant had met the persons assembled at the deceased's house but none of them were eye-witnesses and they had only seen the deceased exhibiting symptoms of poisoning and heard him accusing the accused of having poisoned him and both these facts were mentioned in the first information report :

Held that in the circumstances it was not necessary for the informant to have mentioned the names of the witnesses in the report. (Chowdhry J. C.) Findal v. State

AIR 1954 Him Pra 11=1953 Cr L J 1900.

——First information report.

First information report is not a document in which each and every relevant fact connected with the prosecution should find mention. As its name implies, it is only the first information given to the police with regard to the commission of the crime. That being so, motive for the crime is not a necessary part of the first information report. (Chowdhry J. C.) Lala v. State

AIR 1953 Bilaspur 27=1953 Cr L J 1361.

——Ss. 154 and 162—What is first information—Failure to record—Effect.

The question whether a particular information amounts to F. I. R. or not is essentially a question of fact depending upon the circumstances of each case.

A went to the police station and reported to the officer in charge that B had been shot and that B was removed to certain hospital. The officer instead of taking down the statement merely made an entry to that effect in the general diary and proceeded to the hospital. There he recorded B's statement which was subsequently found to be false. On a charge under S. 211, Penal Code against B:

Held, that the information given by A was the first information. The fact that the information was meagre and failed to indicate whether B had been shot as a result of accident or the voluntary and wrongful act of some one else could not affect its character. So also the fact that the officer did not record it could not make it any the less a first information. Consequently B's statement recorded subsequently fell within the mischief of S. 162 and, therefore, could not be used against. (Balakrishna Ayyar J.) B. Guruswami Naidu v. Guruswami Naidu

AIR 1951 Mad 812 = 1951-1 M L J 426 = 1951 Mad W N 255=1951 Mad W N Cr 83=52 Cr L J 857.

——What is first information — First information report merely mentioning fact of offence without giving list of articles stolen or the names of suspected persons—List of stolen property subsequently handed over to police officer when he arrived for investigation forms part of first information report, See ibid, S. 162

AIR 1949 All 364=50 Cr L J 561.

——Statement made by person suffering from gunshot wounds soon after shooting—Such information cannot be treated as coming under S. 154 so as to make it incumbent on police to start investigation.

Statement made by a person suffering from gunshot wounds soon after the shooting is likely to be somewhat vague. Information of that kind cannot be treated as coming under S. 154 so as to make it incumbent on the officer in charge of the police station to start an investigation; he may reasonably require more information before so doing. (Niyogi and Hemeon JJ.) Magan Lal Radha Kisan v. Emperor

AIR 1946 Nag 173 = I L R (1946) Nag 126 = 1946 Nag L J 139=47 Cr L J 851.

——Ss. 154, 162—That articles recovered from accused were mentioned in list of property but not in first information report is no reason for acquitting accused.

In the case of a dacoity, the list of the stolen property is a part of the first information report. Consequently, the fact that the articles recovered from the possession of the accused were mentioned in the list of the stolen property but not in the first information report is no reason for acquitting the accused. (Plowden J.) Brij Lal v. Emperor

AIR 1943 All 216 = 1943 A L J 166 = 16 R A 25 = 1944 A W R H C 75=207 I C 15=44 Cr L J 555.

——Ss. 154, 162—Report vague and indefinite—Further information given to Police Officer, if falls under S. 154.

Where information which is first given to the Police is of such a vague and indefinite character that it cannot be treated as coming under S. 154 so as to make it incumbent on the officer in charge of the Police Station to start an investigation and he may reasonably require more information before doing so, further information given to him in such circumstances may fall within S. 154, Criminal P. C. It is a question of fact whether a statement made to a Police Officer in the course of investigation comes under S. 162 or is made by way of complaint to commence an investigation under S. 154. (Agarwal J.) Qamrul Hasan v. Emperor

AIR 1942 Oudh 60 (63) = 1941 O W N 1166 = 1941 A W R C C 322=14 R O 280=197 I C 121=43 Cr L J 115.

——There is nothing in law to the effect that a first information report must give every detail or any detail. It should be sufficient to induce the police to leave the police station and investigate the affair. (Addison and Dalip Singh JJ.) Gaman v. Emperor

AIR 1928 Lah 913 = 116 I C 187 = 11 L L J 1=12 A I Cr R 453=30 Cr L J 571.

CRIMINAL P. C. (V of 1898), S. 154 — 10. What is first information report—(e) Sufficiency, etc.

——Ss. 154 and 162 — First information vague — Police making inquiry — Statements made to police during this enquiry not first information.

Circumstances may arise in which information given to the police is of such a vague and indefinite character that it cannot be treated as coming under S. 154 so as to make it incumbent upon the officer in charge of the police station to start an investigation, and he may reasonably require more direct information before doing so and such further information given to him in such circumstances might not come under the provisions of S. 162. The information referred to in S. 154 appears to be something in the nature of a complaint or accusation, or at least information of a crime given with the object of putting the police in motion in order to investigate, as distinguished from information obtained by the police when actively investigating a crime. The information referred to in S. 154 may come from more than one source and more than one such information may be recorded at or about the same time, but once the police have taken active steps to investigate, any written statements taken by them cannot be admissible as evidence as they would come within S. 162. (Miller C. J. and Mullick J.) Gansa Oraon v. Emperor

AIR 1923 Pat 550=2 Pat 517=4 P L T 462=1 Pat L R 178 (Cr) : 73 I C 561=24 Cr L J 641.

10. What is first information report —

(f) Telephone or telegram messages.

——First information by phone.

Since it is not possible to take the signature of the informant, it is not usual to accept such information received by phone or telegram as the first information report. (Koshi C. J. and Govinda Pillai J.) Chiramel Varied Devassikutty v. State

AIR 1953 Trav-Co 275=1953 Cr L J 1301.

——First information report by phone—Report not signed —Person making it, having died not produced—Nothing to show that report was in fact made by him — Report though relevant could not be said to have been made by person who is said to have made it or that it was correct. (Raghubar Dayal and Agarwala JJ.) State v. Rambali

AIR 1953 All 163 = 1952 All W R (H C) 180=1952 All L J 214=1952 R D (H C) 171=1952 All Cr R 60= 1953 Cr L J 428.

——Telegram to Police — Whether constitutes first information report.

A telegram is not a writing given to the Police signed by the person making the statement, and so far as authenticity goes, a telegram stands in no better position than village gossip. Consequently, a telegram to a Police Inspector stating that certain persons committed an offence does not comply with S. 154, Criminal P. C. as it is not signed by the informant. (S. K. Ghose and Henderson JJ.) Kachi Hazam v. Seraj Khan

AIR 1935 Cal 403=39 C W N 403=7 R C 699=156 I C 400=36 Cr L J 919.

——Telegram to Police regarding commission of offence—Whether constitutes First Information Report.

Where an original telegram addressed to the Police regarding the commission of an offence is thumb-marked by the complainant and its authenticity is confirmed, it becomes a written statement complying with all the requirements of S. 154, Criminal P. C. It is immaterial whether a written report is sent through a messenger or through the telegraph; as soon as its genuineness is established, it must be treated as the first information report in the case. Any further statement, made by the complainant can only be regarded as one given in the course of an investigation. (Abdul Qadir and Rangilal JJ.) Chanan Singh v. Emperor

CRIMINAL P. C. (V of 1898), S. 154 — 10. What is first information report—(f) Telephone, etc.

AIR 1934 Lah 413 = 35 P L R 363 = 7 R L 269=15 Lah 814=152 I C 229=36 Cr L J 97 (2).

——Telephone message about injury, whether can be treated as First Information Report.

Section 154, Criminal P. C., is not intended to apply to a telephone message because that section says that every information, whether given in writing or reduced to writing, shall be signed by the person giving it and shall be read over to the informant. Further, the section requires that the information shall be relating to an offence, not merely to an accident or injury. (Wild J. C. and Milne A. J. C.) Meharali Lalji v. Emperor

AIR 1931 Sind 13 = 130 I C 378 = 32 Cr L J 543.

——Telegram—A telegram sent to the police that an offence has been committed is not a document referred to in S. 154. (Phillips and Madhavan Nair JJ.) Public Prosecutor v. Chidambaram

AIR 1928 Mad 791 = 110 I C 461 =28 M L W 187= 10 A I Cr R 388 = 1 M Cr C 159 = 55 M L J 231 = 29 Cr L J 717.

—S. 155.

——Powers and duties of Police — (Hyderabad Cr. P. C., Ss. 156, 157 (2)) — 10 Dec L R 28 and 35 Dec L R 216, held overruled by Appeal No. 1 of 1355 F (Hyd) (FB).

Once a police officer takes up the investigation of a non-cognizable case upon order of the Magistrate, the investigation which he holds becomes an investigation under Chap. 14, Cr. P. C. and he becomes invested with all the powers which are given to him under Chap. 14 including the power to file a challan, and the law does not require that a fresh permission should be given by the Government or the Magistrate concerned for preferring a charge-sheet after considering the result of the investigation. 10 Dec L R 28 and 35 Dec L R 216, held overruled by Appeal No. 1 of 1355F (Hyd) (FB). (Palnitkar and Srinivasachari JJ.) State v. Prabhu Dayal

AIR 1953 Hyd 273 = I L R (1953) Hyd 380 = 1953 Cr L J 1841.

——S. 155 (2) — Offence under Opium Act — Maximum punishment prescribed by S. 9 of that Act being two years offence is non-cognizable one — Police has no power to investigate without an order of Magistrate in view of S. 155 (2), See ibid, S. 4 (1) (n)

AIR 1952 Him Pra 74 = 1952 Cr L J 1712

——Order for investigation — Investigation if could be ordered in anticipation that an offence would be committed —See ibid, S. 162

AIR 1949 All 483 = 50 Cr L J 719 (FB).

——Difference between statements in first information and in evidence given in Court — No discrepancy— Difference of no consequence and credibility of witnesses not affected.

It is possible to visualize that the complainant who files an application immediately after the offence, has no correct notion as to which facts are more important than the others and as such which should be incorporated in the first information. Where the prosecution counsel while examining the witness elicits greater details and those details are not inconsistent with the first information, nothing can be urged against those details.

[Omission to mention in first information that complainant received injury by dangerous weapon while retreating held not of such character as would affect credibility of witnesses, where the story given by them (F.I.R.) was otherwise complete.] (Chudgar and Shukla JJ.) Chavda Raimal Hardas v. United State of Saurashtra

1 Sau L R 74.

CRIMINAL P. C. (V of 1898), S. 155

——Ss. 155, 439 — Non-cognizable offence — No First Information Report — Case should not be thrown out —It is not substantive piece of evidence.

A first information report is not a substantive piece of evidence. It is no doubt an important piece of document and is entitled to consideration along with other evidence and circumstances of the case, but it can never be treated as a piece of substantive evidence. Hence a case of non-cognizable offence should not be thrown out on the ground that no first information report was made. (Thomas C. J.) Mahadeo v. Ram Kuber

AIR 1943 Oudh 451 = 1943 O W N 319 = 1943 A W R C C 88 = 16 R O 101 = 209 I C 114 = 45 Cr L J 75.

——Ss. 155, 94 and 165—The combined effect of Ss. 155, 165 and 94, Criminal P. C. is that without an order of a competent Magistrate, a Police Officer cannot investigate a non-cognizable case and further that even if he is so authorised, he has to observe the formalities as laid down in Ss. 94 and 165, before he can compel the production of any document or seize any incriminating article. (Din Mohammad and Blacker JJ.) Durga Das v. Emperor

AIR 1943 Lah 28 (30)=44 P L R 549=15 R L 266= ILR (1943) Lah 805=204 I C 535 = 44 Cr L J 301.

——S. 155 (3)—Investigation by Police in non-cognizable case — When investigation under Chap. XIV, stated.

Sub section (3) of S. 155, Criminal P. C. is the only provision by virtue of which an investigation in non-cognizable cases shall come under Chap. XIV, and it is limited in its application to a Police Officer receiving such order (the order of a Magistrate). If a Police Officer is otherwise authorized to investigate a non-cognizable case, that power of investigation will not, by itself, attract the provisions of this chapter. Thus, a Police Officer may be authorized to investigate non-cognizable cases under the Opium Act. But this power of investigation does not necessarily bring the investigation itself under Chap. XIV, Criminal P. C. (Lodge and Pal JJ.) Naresh Chandra v. Emperor

AIR 1942 Cal 593=ILR (1942) 1 Cal 436=46 C W N 180=75 C L J 507=15 R C 497 = 204 I C 111 = 44 Cr L J 145.

——Ss. 155 (2), 173, 435, 439—Cases disposed of by Sub-Divisional Officer as non-cognizable — No further investigation without order of competent Magistrate and no charge sheet — Magistrate taking cognizance of case and transferring it to another Magistrate for trial — His act, whether judicial — If open to revision.

Where the cases are disposed of by the Sub-Divisional Magistrate as non-cognizable, there can be no further investigation under Chap. XIV of the Criminal P. C., without the order of a competent Magistrate according to S. 155 (2) and no charge-sheet under S. 173.

Section 192 (1), Criminal P. C., empowers a Sub-Divisional Magistrate to transfer any case of which he has taken cognizance, for enquiry or trial, to any Magistrate subordinate to him. The order of transfer to another Magistrate, therefore, necessarily imports his taking cognizance of the case, and it constitutes a judicial act. Hence, the Magistrate's action in taking cognizance and transferring the case to another Magistrate for trial is a judicial matter open to scrutiny by Courts of Revision under Ss. 435 and 439, Criminal P. C. (Dhavle J.) N. L. Carrick v. Emperor

AIR 1941 Pat 395 = 22 P L T 348 = 7 B R 681 = 13 R P 662=194 I C 94 = 42 Cr L J 504.

——S. 155 (2) — District Magistrate's power to order investigation.

CRIMINAL P. C. (V of 1898), S. 155

The District Magistrate acting under S. 155 (2), Criminal P. C., can order an investigation into a case under S. 294-A, I. P. C., even though such offence cannot be tried without the complaint of the Local Government or an officer empowered by the Governor-General in Council in this behalf under the terms of S. 196, Criminal P. C. (Dalip Singh J.) General Relief Association, Lahore v. Emperor

AIR 1932 Lah 581 (581)=Ind Rul (1932) Lah 534 = 33 P L R 824 =138 I C 751=33 Cr L J 678.

——Complaint

Application requiring sanction of the Court for making an investigation under S. 155 (2) is not a complaint. (Mirza and Broomfield JJ.) In re Shivlingappa Bhagappa,

AIR 1930 Bom 372 = 32 Bom L R 782 = 1930 Cr C 891=31 Cr L J 1142.

——Investigation, powers of.

A police officer while he is holding an investigation on a charge of house trespass in the house of A, has no right to enter the house of A's neighbour B, and if he so enters the house of another person he is not acting in the discharge of his duty as such public officer. The only authority which a police officer making an investigation has to enter a house without a search warrant is when he has reasonable grounds for believing that anything necessary for purposes of an investigation into any offence, which he is authorised to investigate, may be found in any place within the limits of the police station of which he is in charge. (Dalal J.) Jagannath v. Emperor

AIR 1928 All 185 = 107 I C 688 = 9 A l Cr R 102= 9 L R A Cr 13 = 26 A L J 410=29 Cr L J 272.

——Ss. 155 and 172—Non-cognisable offence—Police diary.

In non-cognizable cases, the Police Officer can investigate only under the orders of a Magistrate. While so investigating he must keep a diary under S. 172, Criminal P. C. The omission to keep such diaries deprives the Court of very valuable assistance (Rattigan C. J. and Le Rossignai J.) Hira Lal v. Emperor

AIR 1918 Lah 171 = 18 P W R Cr 1918 = 16 P R Cr 1918=63 P L R 1918 =45 I C 277 = 19 Cr L J 517.

——Ss. 155 and 173—Case not disposed of by Magistrate —Police prosecution under S. 211, I. P. C.—Legality of.

Where a person gave information to the Police of non-cognisable offence and the Magistrate authorised the Police to investigate the case and report to him, but the Police without reporting to the Magistrate, instituted proceedings against the informant under S. 211, I. P. C., and got him convicted : Held that the conviction was bad, and must be set aside. Even if the Magistrate had not directed a report to be made, S. 173, Cr. P. C., requires that it should be made. The case was one which could not be disposed of before the Magistrate passed some order or other. (Heaton and Shah JJ.) Appa Ragho Bhogle v. Emperor,

AIR 1915 Bom 80=17 Bom L R 69=27 I C 545=16 Cr. L J 161.

——Ss. 155 and 190, Cl. (1) (b) — Non-cognisable case reported by Police—Procedure.

A Magistrate who receives a Police report in a non-cognisable case but doubts its correctness, can order an investigation under S. 155. He cannot however examine the Police Officer who submitted the report as if he was a complainant. (Shaw J. C.) Nga Saw Ke v. Emperor,

AIR 1914 Upp Bur 31 = (1914) 2 U B R 19=27 I C 145=16 Cr L J 97.

——Ss. 155 and 190 — Information of commission of non-cognizable offence—Procedure.

Upon information given of the commission of a non-cognizable offence, a police officer can, instead merely

CRIMINAL P. C. (V of 1898), S. 155

referring the informant to a Magistrate under S. 155 (1), report the case to a Magistrate for orders under Cl. (2) of the same section, the Magistrate can under such circumstances order an investigation without first taking cognizance of the offence in one of the three ways mentioned in S. 190. (Munro and Abdur Rahim JJ.) In re Asadulla Hussain Khan,

6 M L T 259=4 I C 1043=11 Cr L J 156.

——Ss. 155, 190, 191 — Magistrate taking cognizance under S. 190 (c).

Held that affray being a non-cognisable offence the Police Officer who received information should have referred the informant himself to a Magistrate under S. 155 (1). He was not called upon to make a report under any provision of the Code to the Magistrate and therefore the informal communication that he submitted could not be accepted as a report under S. 190 (b). The Magistrate should therefore be taken to have acted under S. 190 (c) and taken up the case on his suspicion that an offence has been committed. The information of the Police Officer excepted in this clause should be restricted to such information as the Police Officer submits in accordance with the provisions of the Code. In such a case, the Magistrate was bound to inform the accused that if they wished, they would be tried by another Magistrate under S. 191, where this is not done the conviction is illegal. (Nanjundayya Offg., C. J. and Chandrasekhara Aiyar Offg. J.) Narayansami Pillai and Narappa Chetty v. Govt. of Mysore,

12 M C C R 86=9 Cr L J 331 (Mysore).

——Ss. 155 (2) and 156 (3) — Order for investigation without complaint.

Where a certain person made a representation to the Magistrate stating certain circumstances and the Magistrate in the belief that an offence had been committed, referred the matter to the police with authority to investigate and report :

Held, that although there was no complaint before the Magistrate, he had power to order investigation by the police under S. 155 (2) if it was a case of non-cognizable offence and under S. 156 (3) if it was a case of cognizable offence. (Aston and Heaton JJ.) Emperor v. Vishwanath Krishna Sathe,

8 Bom L R 589=4 Cr L J 183.

—S. 156.

SYNOPSIS

1. Irregularities in investigation.
2. Miscellaneous.
3. Officer in charge of police station.
4. Order for investigation.
5. Powers and duties of police.
6. Powers of Sessions Judge to order investigation.

1. Irregularities in investigation.

——Applicability to investigation of an offence under S. 161, I. P. C. — Effect of S. 3, Proviso, Prevention of Corruption Act—See Prevention of Corruption Act (1947), S. 3.

AIR 1953 Cal 226=1953 Cr L J 556.

——Ss. 156 and 537 — Accused, an Executive Engineer serving under Indian Government working at Agartala (Tripura State) before merger — Investigation of corruption charge against accused by Superintendent of Police of Special Police Establishments under Government of India — Permission of Dewan of State and Magistrate obtained— Local Superintendent of Police with the party

CRIMINAL P. C. (V of 1898), S. 156 — 1. Irregularities in investigation

at time of investigation— Investigation held was legal — Even if there was irregularity it was cured by S. 537, when accused was not prejudiced. (Lakshmi Narain J. C.) P. K Subbiah v. State

AIR 1952 Tripura 1=1952 Cr L J 1201.

——Offence under Prevention of Corruption Act — Investigation by officer below Deputy Superintendent of Police — Irregularity will not vitiate investigation — See Prevention of Corruption Act (1947), S. 5 (4).

AIR 1952 All 122=1952 Cr L J 292.

——Offence under S. 161, Penal Code — Investigation by officer not authorised under proviso to S. 3, Prevention of Corruption Act — Proceedings if cannot be called in question by virtue of S. 156 (2) — Prevention of Corruption Act (II [2] of 1947), S. 3.

Section 156 (2), Criminal P. C., is in terms wide enough to cover an investigation into an offence punishable under S. 161 or S. 165, Penal Code, which is conducted by a police officer not authorised under the proviso to S. 3, Prevention of Corruption Act : A I R 1948 Bom 163=49 Cr L J 196, Rel. on.

The failure to comply with the proviso to S. 3, Prevention of Corruption Act is, therefore, an irregularity falling within S. 156 (2), Criminal P. C., and accordingly the proceedings of the investigating officer cannot be called in question. (Mootham and Wanchoo JJ.) Pramod Chandra Shekhar v. Rex

AIR 1951 All 546 = 1949 A L J 441 = 1949 A W R (H C) 454=1949 All Cr C 111 = ILR (1950) All 332 = 52 Cr L J 197.

——S. 156 (2) — Irregularity in investigation and arrest of accused—Jurisdiction of Magistrate to try the case.

Even if an irregularity has been committed by a Sub-Inspector in the investigation of a cognizable offence and in arresting the accused, the charge-sheet submitted by him to the Magistrate can be treated as "a report made in writing by a Police Officer" within the meaning of S. 190 (1) (b) and the Magistrate has jurisdiction to try the case in view of the provisions of S. 156 (2).

Even supposing that the charge-sheet cannot be treated as a report it can be treated as a 'complaint' within the meaning of S. 4 (1) (h) and would therefore fall under S. 190 (1) (a) and the Magistrate has jurisdiction to take the cognizance of it — See ibid S. 190 (b) and (a) A I R 1948 Bom 163=49 Cr L J 196.

2. Miscellaneous.

——Statements during investigation—See Criminal P. C. (1898), S. 154.

ILR (1951) 1 Cal 539.

——Ss. 156, 96 — Investigation under S. 156 — Issue of search warrant in general terms — Legality of — Incriminating articles found on such search— Whether can be returned to accused.

Where an Inspector is conducting an investigation under S. 156, Criminal P. C., and an enquiry, the issue of a search warrant in general terms and not for search of a particular document or things is illegal under S. 96 (1), Criminal P. C.

But though the warrant is illegally issued when among the things found are documents or things which incriminate the accused persons in whose possession they were found, they cannot be returned to them because the warrant was issued on a faulty basis. (Spargo J.) M. I. Mamsa v. Emperor

AIR 1937 Rang 206=.10 R Rang 111=170 I C 870= 38 Cr L Jour 983.

—— Ss. 156, 159—Judicial inquiry.

Where on receipt of information that a grave crime was being or was about to be committed the District

CRIMINAL P. C. (V of 1898) S. 156 — 2. Miscellaneous

Magistrate made a secret inquiry through his officials and took necessary steps for prevention of the crime but no notice was given to anybody, on behalf of the person principally interested, and there was nobody to check the mode in which the alleged statements were elicited, nobody to test the statements by cross-examination. nobody to watch the accuracy with which they were recorded, the inquiry cannot in any sense be termed a judicial inquiry and, consequently, no weight can properly be given to the proceedings at, or the result of, such enquiry. When reliance is sought to be placed upon an alleged statement made by a boy at such inquiry it must be proved that the language used was his own and not put in his mouth by the person conducting the examination, as nothing could be easier than to extract by the latter process almost any statement from a frightened child, who suddenly finds himself alone in the custody of strangers, and some of them officials. (Lord Macnaghten, Sir Andrew Scoble, Sir Arthur Wilson and Sir Alfred Wills) Chandrasingh Himat Sang v. Mohansang Hamir Sang

1 M L T 301=4 C L J 181 =8 Bom L R 705 = 30 B 523=33 I A 198=4 Cr L J 334 (PC).

3. Officer in charge of police station.

—— Ss. 156, 537 — Investigation by inferior officer — Defect curable under S. 537—Trial not vitiated.

As a matter of fact, a conviction or an acquittal does not depend upon the question as to which particular officer actually conducted the investigation which resulted in the trial. That is to be determined mainly on the basis of the evidence that is tendered at the trial. Therefore, an irregularity occasioned by a Sub-Inspector investigating into an offence instead of an inspector, is curable by S. 537, Criminal P. C., and does not by itself vitiate the trial. (Kilam J.) Ghulam Nabi v. State

AIR 1953 J & K 3 = 9 J & K L R 18 = 1953 Cr L J 296.

—— Ss. 156 (1) and (3) and 202 — Powers of police officer under S. 156 (1) are not affected by order of Magistrate under S. 202.

A Magistrate has the power to order the police to investigate cognisable cases under S. 156 (3) before taking cognisance of the complaint under S. 190 (1) (a). After taking cognisance, his powers are confined to the limits imposed on them by S. 202 and though he may in the exercise of those powers order the police to investigate and submit a report, he cannot direct the police to investigate and submit a charge-sheet under S. 156 (3). But any action taken by the Magistrate under S. 202 does not deprive the police of its powers which it may exercise independently under S. 156 (1) : 30 Cri. L. J. 781 and 39 Cri. L. J. 681 (F. B.); Dissent. (Ram Labhaya and Deka JJ.) Asha Das v. State

AIR 1953 Assam 1= ILR (1952) 4 Assam 453=1953 Cr L J 168.

——S. 156 (3) —Complaint not forwarded to police officer in charge of proper police station — Complaint not also treated as First Information Report — Charge sheet submitted by police not officer in charge of proper police station — Proceedings and conviction upon such charge sheet, held could not be upheld. (Harries C. J. and Das J.) Pulin Behari Ghosh v. The King

53 C W N 653.

——S. 156 (3) — Order for investigation must be directed to "any officer in charge of police station, referred to in S. 156 (1) — D. D. I. is not such an officer. (Harries C. J. and Das J.) Pulin Behari Ghosh v. The King,

53 C W N 653.

CRIMINAL P. C. (V of 1898), S. 156

4. Order for investigation.

——Ss. 156 (1) and (3), 190 (1) (a), 200, 202, 204 and 537 (a)—Complaint—Complainant examined — Contravention of S. 202—Legality of trial.

A Magistrate on receiving a complaint examined the complainant and after that, instead of issuing a process for the attendance of the accused, directed the police to register the case and after investigation report the result. The police incorporated the complaint in the F. I. R. and after completing the investigation submitted a charge-sheet. The Magistrate initiated proceedings on this chargesheet and ultimately convicted the accused:

Held (Per Ram Labhaya J.) (1) that the Magistrate had taken cognisance of the offence, as he could examine the complainant only on taking cognisance:

(2) that the order of the Magistrate directing the police to register the case contravened the provisions of S. 202.

(3) that this deviation from the provisions of S. 202 did not vitiate the trial.

Per Deka J. — (1) that cognisance could not be said to have taken simply because the complainant was examined under S. 200;

(2) that apart from the question of cognisance, the proceeding had not commenced before the Magistrate when he sent the complaint to the police, but the proceeding commenced only when actions were taken under S. 204, Cr. P. C. against the accused persons on receipt of the charge-sheet and consequently the question of surrendering of jurisdiction did not arise;

(3) that even if it be held that the order was a slightly confused one, it could not be said that the trial proceeding on the basis of the police report was so irregular as to make it void ab initio. (Ram Labhaya and Deka JJ.) Asha Das v. State,

A I R 1953 Assam 1 = I L R (1952) 4 Assam 458 = 1953 Cr L J 168.

——S. 156 (3) — Magistrate taking cognisance— Applicability.

Section 156 (3) has no application once cognizance of a case is taken on a complaint. The Magistrate on taking such cognizance is bound to proceed in accordance with the provisions of S. 200 and the following sections. He would be acting without jurisdiction if he directs the police to investigate and submit a charge-sheet. All the proceedings subsequent to the police investigation and the charge-sheet submitted by them, in pursuance of the direction, would be without jurisdiction. (Sen J.) Santosh Kumar v. King,

A I R 1952 Cal 193 = 19 Com Cas 49 = 1952 Cr L J 552.

——156 (3) — Complaint to Magistrate — Magistrate instead of taking cognizance if can send it to police for investigation—See ibid, S. 190 (1) (a),

A I R 1950 Cal 437=52 Cr L J 806.

——S. 156 (3)—Applicability.

Section 156 (3) has no application whatsoever in a case where cognizance is taken upon a complaint. (Sen J.) Yakub Sheikh v. The King.

A I R 1950 Cal 340=54 C W N 373=51 Cr L J 1290.

——Ss. 156 (3), 190— Complaint to Magistrate — Magistrate forwarding complaint to Police.

If a Magistrate, on a complaint being made to him, does not take cognizance but merely forwards the complaint to the police for investigation and for taking cognizance he acts under S. 156 (3) and proceedings based on a charge-sheet submitted by the police are valid. (Harries C. J.) Pacha v. The King,

A I R 1950 Cal 246=54 C W N 181= 85 C L J 98 = 1950 A W R (Sup) 58=51 Cr L J 720.

CRIMINAL P. C. (V of 1898), S. 156 — 4. Order for investigation

——S. 156 (3) — Magistrate taking cognizance upon complaint — He must proceed under S. 200 and examine complainant on oath—He cannot proceed under S. 156 (3) and send case to police for investigation and report — See ibid, S. 200,

A I R 1949 Cal 197=50 Cr L J 368.

——S. 156 (3)—Applicability.

The provisions of law contained in section 156 (3) have no application when cognizance has been taken upon a complaint. (Sen J.) Abhoy Charan v. Bangashadhar,

A I R 1949 Cal 58 = I L R (1947) 2 Cal 208 = 49 Cr L J 647 (1).

——S. 156 (3)—Complaint before Magistrate — Course to be followed by him indicated — He cannot pass hybrid composite order both under S. 156 (3) and S. 202 — See ibid, S. 200

53 C W N 633

After an issue of process directing investigation under S. 156 (3), the Magistrate must proceed in accordance with Chap. XXI, S. 252 and the following sections which are mandatory and which provide that the Magistrate shall proceed to hear the evidence.

He cannot adjourn the hearing sine die. (Young C. J. and Sale J.) Kehar Singh v. Kirpal Kaur

A I R 1942 Lah 256 (257) = 15 R L 154 = 44 P L R 401=I L R (1943) Lah 726 = 202 I C 609 = 43 Cr L J 865

——S. 156 (3)—Applicability.

Section 166 (3), Criminal P. C., applies only to the stage before the issue of process and cannot apply to a case in which the Magistrate has already issued process and summoned the accused; this is obvious from a consideration of S. 156 itself and the reference in S. 156 (3), to a Magistrate empowered under S. 190 which section deals with the initiation of proceedings alone. (Young C. J. and Sale JJ.) Kehar Singh v. Kirpal Kaur,

A I R 1942 Lah 256=15 R L 154 = 44 P L R 401 = I L R (1943) Lah 726=202 I C 609=43 Cr L J 865.

——S. 156 (3) —Complaint of offence made to Magistrate as such — He cannot refuse to take cognizance of it and send it to Police for inquiry and then dispose of it by executive order.

Section 156 (3), Criminal P. C., relates to a stage before the Magistrate has taken cognizance of the offence and not after, but it does not mean that a Magistrate can refuse to take cognizance of an offence upon a complaint made to him within the definition of S. 4 (1) (h).

When, therefore, a complaint of an offence is made to a Magistrate as such, he cannot refuse to take cognizance of it and send it to the Police for enquiry under S. 156 (3), and then dispose of it by executive orders and by what is known as a "B" summary. (Davis J. C. and Lobo J.) Shahdad Gadai v. Emperor

A I R 1940 Sind 215=I L R (1940) Kar 431=13 R S 161=191 I C 400=42 Cr L J 162.

——The Magistrate has to take cognizance when criminal complaint is presented to him. Under S. 156 (3), it is contrary to law if he returns it to the police officer for investigation and report. (King J.) Emperor v. Parimi Subbanna

1936 M W N 1094 (1).

——S. 156 (3)—Section 156 (3), Criminal P. C., is couched in wide terms and the utility of the section will be much diminished if the section were held to apply only to those cases in which a Magistrate takes cognizance on his knowledge or suspicion. (Milne J. C. and Aston A. J. C.) Emperor v. Ghulam Nabi Allahwadhayo,

A I R 1933 Sind 136 = 27 Sind L R 67 = Ind Rule (1933) Sind 185=144 I C 409=34 Cr L J 763.

CRIMINAL P. C. (V of 1898), S. 156 — 4. Order for investigation

——Ss. 156, 202, 529 — Complaint to Magistrate—Order for investigation by Police—Police sending charge-sheet—Validity of proceedings.

The powers given to the Police by S. 156, Criminal P. C., are not affected when an order to investigate under S. 202 is made, and though it is not open to the Magistrate when a complaint has been made to him, to direct the Police to make a charge in the same case, it is open to the Police to do so, if they think proper.

Even if such a procedure is erroneous, the proceedings of the Magistrate cannot be set aside merely on this ground, in view of the provisions of S. 529 of the Code. (Abdul Qadir and Monroe JJ.) Rashid Ahmad v. Emeror

A I R 1932 Lah 579 = 14 Lah 194 = Ind Rul (1932) Lah 561=33 P L R 840 = 139 I C 139=33 Cr L J 737.

——Complaint forwarded under S. 202—Police, held, can investigate under S. 156 if they choose to do so. The investigation is not illegal but mere report by them is sufficient. (Jackson J.) Gopal Naick v. Alagirisami Naick,

A I R 1931 Mad 770 = 33 L W 460 = 1931 M W N 368 = 54 Mad 598 = Ind Rule (1931) Mad 512 = 60 M L J 520=131 I C 176=32 Cr L J 690.

——Order directing enquiry—When to be passed

If a Magistrate asks the police to make an enquiry under S. 156 (3) after he has issued process to the accused, his order is without jurisdiction and the police enquiry started under such an order is illegal. (1911) 2 M W N 74, Foll. But the mere fact that the Magistrate orders issue of process to complainant, accused and prosecution witnesses, does not take away from him the power to direct the police to enquire into the case. (Devadoss J.) S. Vijayaraghavachariar v. Emperor,

AIR 1928 Mad 1268=114 I C 365 = 1 M Cr C 341= 30 Cr L J 326.

——Private complaint — No ouster of power of police to enquire.

The mere fact that a private complaint is filed in a Court and the Magistrate takes cognizance of the private complaint does not and cannot deter the police from enquiring into the offences which have been committed and which come to their knowledge not from the complainant party but on information which they secure in the course of their duty from other persons. A charge-sheet then framed by the police is proper and the mere fact that there was a private complaint does not take away the rights of the police to conduct the prosecution. (Devadoss J.) Vijayaraghavachariar v. Emperor.

AIR 1928 Mad 1268=114 I C 365=1 M Cr C 341=30 Cr L J 326.

——Ss. 156 (3), 200 and 202—Complaint to Magistrate—Procedure — Reference to Police — Omission to record reasons.

On presentation of a complaint of any offence, the Magistrate must immediately proceed as laid down in Chap. XVI of the Criminal P. C. The third clause of S. 156 does not provide an alternative procedure to that in S. 200 : 30 Cal. 923, Expl. A Magistrate recorded the sworn statement of the complainant and numbered the complaint and referred it to the Police without recording his reasons for doing so and on receipt of the Police report dismissed the case :

Held, that the final order was not a legal disposal under S. 203 and that the omission to record reasons for reference to the Police did not render it invalid. (Ayling and Spencer JJ.) In re, Arula Kotiah,

10 M L T 120=(1911) 2 M W N 74 = 11 I C 999=12 Cr L J 463.

CRIMINAL P. C. (V of 1893), S. 156 — 4. Order for investigation

——S. 156 (3)—Order for investigation without complaint —See ibid, S. 155 (2)

4 Cr L J 183 (Bom).

5. Powers and duties of police.

——Ss. 156, 173, 208 and 286—Commitment proceedings —Power of police to reopen investigation — Powers and duties of committing Magistrate.

The police have the right to reopen investigation even after submission of charge-sheet under S. 173, Criminal P. C., if fresh facts come to light. Such fresh investigation can be made even after commitment proceeding had commenced and even after commitment proceeding had terminated.

There is no question of the Police requiring the permission of the committing Magistrate before reopening the investigation once commitment proceeding had commenced and the Magistrate has no jurisdiction to disallow further investigation.

The committing Magistrate has no doubt a discretion to continue the commitment proceeding in spite of request by the police to adjourn the case for reopening the investigation; but if prior to his fixing a date for continuing the enquiry the Police succeed in completing the supplementary investigation and give a further list of witnesses to be examined on the side of the prosecution, the Magistrate may examine them and then proceed in accordance with the provisions of Chapter XVIII of the Criminal Procedure Code.

Further there is no bar to the Public Prosecutor citing new list of witnesses before the commencement of the Sessions trial and the Sessions Judge will exercise his discretion in allowing the examination of such additional witnesses bearing in mind the principles about avoiding prejudice to the accused persons.

The fact that such witnesses were examined at a belated stage may be one of the circumstances for discrediting the testimony of those witnesses during trial unless reasonable explanation can be offered for such delay. This, however, is a matter for the trial Court to decide. (Narasimham J.) Prosecuting Inspector, Keonjhar v. Minaketan Mahato,

A I R 1952 Orissa 350=I L R (1952) Cut 104=1952 Cr L J 1635.

——Powers of police investigation.

After the police had once put up a complete challan against A, in which B was cited and examined as a witness and case was pending before a Magistrate, the action of police in resuming investigation and putting up a new challan against B, as a result of the further investigation, is unauthorised and unlawful. (Gupta J.) Hanuman v. Raj,

AIR 1951 Raj 131=52 Cr L J 964.

——S. 156 (3)—Complaint to Magistrate—Magistrate forwarding complaint to Police to make enquiry and take cognizance if any cognizable offence was made out and send report — On seeing report Magistrate taking cognizance and proceeding with trial — Legality—See ibid, S. 200.

AIR 1950 Cal 99=51 Cri L J 457.

——S. 156 (1) — Number of investigations into crime is not limited by law—Challan put before Magistrate — On further information that certain other persons and not the persons named in the challan were involved in the offence, police seeking order of Magistrate to investigate case relating to same offence—Order of Magistrate allowing fresh investigation, though unnecessary, is not invalid: A. I. R. 1919 Mad. 751 and A. I. R. 1932 Lah. 103, Rel. on.; A. I. R. 1932 Lah. 611, Disting. (Din Mohammad and Cornelius JJ.) Mohd. Niwaz v. Emperor,

231 I C 354 (Lah).

CRIMINAL P. C. (V of 1898), S. 156—5. Powers and duties of police

——Conflicting versions of occurrence—Duty of Police.

Where there are conflicting versions of an occurrence, the Police should make up their minds which of the conflicting versions is true, and should send accused for trial accordingly. When there are two versions of an occurrence which cannot be reconciled and both of which cannot possibly be true, it is clearly improper that persons should be sent up for trial on the basis, both of one version and of the other. When this is done, the Magistrate before whom the two cases come is apt to take the view that as he has "prima facie" evidence before him against both sets of accused persons, he is practically bound to commit both the cases to the Court of Session, and leave it to that Court to attempt to discover which of the two stories is true. The Sessions Court has then to try two cases instead of one, and the Government Pleader prosecuting is faced with the difficulty of pressing before the Court with equal assiduity two cases which cannot both be true. When each case ends in a conviction, and there are appeals, the Government Advocate finds himself here also in an extremely difficult position, since it is clearly impossible for him to urge the correctness of both the opposing versions, and it is extremely difficult for him to decide which case to represent as the correct one. (Nanavutty and Smith JJ.) Mangali v. Emperor,

AIR 1937 Oudh 72=1936 O W N 928=9 R O 172=12 Luck 438=165 I C 237=37 Cr L J 1109.

——Duty of Court—Police investigation.

The administration of criminal justice requires that every act done by the agency responsible for the investigation of crime must be fair, upright and free from taint of any sort. The Police should inspire full confidence in the public and conduct itself in such a regular manner as not to afford any genuine cause of complaint to those with whom it deals. It is then and then alone that justice can be properly dispensed. (Din Muhammad J.) Kartar Singh v. Emperor,

AIR 1934 Lah 692=35 P L R 744=7 R L 670=155 I C 263=36 Cr L J 679.

——Investigating Officer—Duties of.

An officer investigating into a serious case should not openly ally himself with a person who is strongly suspected by the relatives and friends of the deceased, and carry on the investigation, as if it were under his auspices. (Tekchand J.) Emperor v. Rai Singh Narain Singh,

AIR 1933 Lah 871=6 R L 254=34 P L R 1010=146 I C 665=35 Cr L J 137.

——Investigation of crimes—Duty of Police.

The duty of the Police in the investigation of any crime is to discover the truth and not simply to obtain evidence for the purpose of securing a conviction. (Young and Thom JJ.) Shukul v. Emperor,

AIR 1933 All 314 = 55 All 379=Ind Rul (1933) All 399=1933 A L J 590=144 I C 207=34 Cr L J 689.

6. Power of Sessions Judge to order investigation.

——Ss. 156, 190—Jurisdiction of Sessions Judge to direct an investigation by police—S. 156 only gives power to a Magistrate empowered under S. 190 to direct an investigation by the police into cognisable cases. A Court of Session is differentiated under the Code from a Court of a Magistrate and therefore has no power to order an enquiry, and such an order. (Robertson and Johnstone JJ.) King-Emperor v. Ali,

11 P R 1910 Cr=184 P L R 1910=16 P W R 1910 Cr=5 Ind Cas 915=11 Cr L J 330.

—S. 157.

——See also ibid, S. 337.

CRIMINAL P. C. (V of 1898), S. 157

——Failure to send report to Magistrate — Amounts to serious breach of duty on part of police officer—Does not vitiate trial if there is no prejudice to accused—(Criminal P. C. (1898), S. 537). (Kilam J.) Ghulam Nabi v. State,
AIR 1953 J & K 3=9 J & K L R 18=1953 Cr L J 296.

——Ss. 157 and 190 (1) (b)—Absence of first report under S. 157—Cognizance taken by Magistrate—Validity.

Where the police did not send first report under S. 157, Criminal P. C., concerning an offence under S. 353, Penal Code, but incidentally requested the Magistrate to try the accused for that offence in a report under S. 173, Criminal P. C., in respect of certain other offences and the Magistrate took cognizance of the offence under S. 353, Penal Code, on such request, the Magistrate's act of taking cognizance of that offence under S. 190 (1) (b), Criminal P. C., is not illegal. (Trivedi J. C.) Alana Umar v. The Kutch Government, Bhuj,
AIR 1950 Kutch 59=51 Cr L J 1319.

——Section 157, when directing that a Police Officer, who has reason to suspect from information or otherwise that an offence which he is empowered to investigate under S. 156 has been committed, shall proceed to investigate the facts and circumstances, supports the view that in the case of a cognizable offence, the receipt and recording of an information report is not a condition precedent to a criminal investigation. (Lords Chancellor (Viscount Simon), Porter, Simonds, Goddard and Sir Madhavan Nair) King-Emperor v. Nazir Ahmad,
AIR 1945 P C 18=11 B R 180=1945 A L J 47=26 P L T 56=47 Bom L R 245=17 R P C 51=80 C L J 19=1945 O W N 258=I L R (1945) Lah 1=1945 A W R (P C) 21 = 1945 Kar (P C) 89 Sup=49 Cal W N 191=1945 Mad W N 49=(1945) 1 Mad L J 86=58 Mad L W 57=71 I A 203=217 I C 1=46 Cr L J 413 (PC).

——A Police Officer fails to comply with the mandatory provision of S. 157 if he omits to send a report to the Magistrate and a copy of the first information. But non-compliance with this provision of law does not vitiate the trial. (Courtney-Terrell C. J. and Adami J.) Hafiz Mohammad v. Emperor,
AIR 1931 Pat 150 = 12 P L T 393=131 I C 17=32 Cr L J 638.

——Preliminary inquiry—Powers of Magistrates.

Where the case comes before a first class Magistrate, under the provisions of Ss. 157 and 159 of the Cr. P. Code he can depute a Sub-Deputy Magistrate to hold an investigation or a preliminary inquiry. The latter can also under the provisions of S. 164, Sub-S. (1) record a statement of a witness made before him in the course of the police investigation and therefore this is admissible as a statement made in the course of an investigation. (Sanderson C. J. and Chotzner J.) Harendra Nath v. Emperor,
AIR 1925 Cal 161=84 I C 451 = 40 C L J 313 = 26 Cr L J 307.

——Ss. 157 and 165 — Locking of house of accused by Police—Jurisdiction.

Though S. 165 limits the powers of a Police Officer to the limits of the station in his charge and though the locking of the doors of the accused's house is a step facilitating the search of the house, yet the locking of the doors and the keeping of guards over the house are also part of the ordinary duties of the Police under S. 157, which does not prevent the Police of one Police Station from acting under that section in the jurisdiction of another Police Station. (Johnstone, J.) Natha Singh v. Emperor,
AIR 1915 Lah 376 = 63 P W R 1915 (Cr)=29 I C 823=12 P R 1915 (Cr)=16 Cr L J 551.

CRIMINAL P. C. (V of 1898), S. 157

——Investigation.

An informal inquiry preliminary to a formal investigation is not an investigation under S. 157, Criminal P. C. (Sankaran Nair and Ayling JJ.) In re Nandmuri Anandayya,
AIR 1915 Mad 312=1 L W 355=(1914) M W N 382 =25 I C 630=15 Cr L J 622.

——Ss. 157 to 167—Evidence Act, S. 157.

Per White, C. J. and Ayling J. — The "local area" of an officer of the C. I. D. is the Presidency of Madras and he is therefore competent to investigate an offence under the Criminal P. C.; Sankaran Nair J., Contra — An Inspector of the C. I. D. is not one of the officers legally entitled to investigate an offence under Ss. 157 to 167 of the Criminal P. Code and so his evidence is not admissible under S. 157 of the Evidence Act. (White C. J., Sankaran Nair and Ayling JJ.) Emperor v. Nilakanta,
35 Mad 247 : (1912) M W N 207 = 22 M L J 490 = 11 M L T 1 (Supp.)=14 I C 849= 13 Cr L J 305 (SB).

——Failure by police to send report under.

Not sending to the Magistrate the report required by S. 157 (1), Criminal P. C. and also by the Police Manual, is a serious neglect of duty which may lead to failure of justice. Such conduct on the part of the police would lead to a grave suspicion that the police were concocting false evidence. (Hayward J. C., and Leggatt A. J. C.) Crown v. Ralochkhan Wd. Kandero,
4 S L R 38=7 Ind Cas 601=11 Cr L J 498.

——First information report—Use of—See ibid, S. 297.
11 Cr L J 557 (Cal).

——Panchanama of scene of occurrence.

A Panchanama of the place where the deceased's body was lying is meant to record what was observed on or around the body but not what was missing. (Rendall), Emperor v. Ramji Jetha,
19 K L R 137=10 Cr L J 274 (Kathiawar)

—S. 158.

——Information received.

"From information received" in S. 157 refers to information given in S. 154. (Coxe and Ryves JJ.) Jagdami Pershad Singh v. Mahadeo Kandoo,
5 Ind Cas 693=14 C W N 326=11 Cr L J 201.

—S. 159.

——Scope.

Section 159 does not empower a Magistrate to restrain police investigation and order magisterial enquiry where investigation of a cognizable offence by the police is already proceeding. (Mohd. Sharif and Mohd. Khurshid Zaman JJ.) The Crown v. Mohd. Sadiq Niaz,
AIR 1949 Lah 204=Pak Cas (1949) Lah 385=P L D 1949 Lah 562=Pak L R (1949) Lah 48=50 Cr L J 965.

——S. 159, if covers reference to mashirnama as to what was done or seen.

Section 159, Criminal P. C., is wide enough to cover reference to a mashirnama as to what was done or seen but not as to what was said. There should then be no practical difficulty in the way of adducing sufficient evidence of identification tests in Court to preserve their utility. (Davis J. C. and Weston J.) Mor Mohamud v. Emperor,
A I R 1940 Sind 168 = 13 R S 81 = ILR (1940) Kar 487=190 I C 499=41 Cr L J 924.

——Enquiry, held not by officer suggested by Magistrate —Submission of charge sheet by investigation officer, whether illegal.

The mere fact that the enquiry was not held by a particular officer as suggested by the Magistrate in his order does not make the submission of the charge-sheet

CRIMINAL P. C. (V of 1898), S. 159

on the part of the investigating Police, contrary to the provisions of the Criminal P. C. (S. K. Ghose and Henderson JJ.) Osman Sheikh v. Hari Pada Biswas,

AIR 1935 Cal 731=62 Cal. 469=8 R C 342 (1)=159 I C 660=37 Cr L J 139 (1).

——Magistrate holding a preliminary enquiry under S. 159 :

Held, that under S. 164, it is not obligatory to record in writing a confession made to him by an accused person and such confession may be proved by the oral testimony of the Magistrate. (King and Bajpai JJ.) Sideshwar Nath v. Emperor,

A I R 1934 All 351 = 1934 A L J 178=7 R A 280 = 55 All 730=3 A W R 459=152 I C 174 = 36 Cr L J 45.

——Offences under Ss. 467 and 471, Penal Code, cannot be taken cognizance of except on a complaint in accordance with provisions of S. 159, Criminal P. C. (Milne J. C. and Dadiba C. Mehta A. J. C.) Hayat Khan v. Emperor,

AIR 1932 Sind 90 (91)=Ind Rul (1932) Sind 77=26 Sind L R 73=137 I C 341=33 Cr L J 452 (2)

——Investigation, delay in, effect of.

It is not proper to abandon an investigation and resume it after some days, as a delay of this kind may cause serious prejudice to an accused person by giving time to the witnesses to bring their evidence to harmony, by making identification less certain and by interfering with the preparation of the defence. (Shadilal C. J. and Monroe J.) Emperor v. C. Barwick,

A I R 1932 Lah 345 = Ind Rul (1932) Lah 181=13 Lah 573=33 P L R 443=136 I C 5=33 Cr L J 220.

——S. 159 (7) (a)—Sessions Judge—Penal Code, Ss. 182, 193—Sanction by Magistrate—Sessions Judge.

A Sessions Judge has no jurisdiction to quash in appeal a sanction granted by a Magistrate not 'subordinate' to him within the meaning of S. 195 (b), Criminal P. C. In the case of contradictory statements, a court granting sanction should be empowered to grant sanction in respect of each of the statements said to be contradictory to each other. (Ayling and Hannay JJ.) Reddi Ram Reddi v. Public Prosecutor of Kurnool,

A I R 1915 Mad 508=(1914) M W N 793=27 M L J 586=25 I C 524=15 Cr L J 612.

——Ss. 159, 476—Sanction for prosecution—Legality.

A Magistrate can only hold an inquiry under S. 159 when the order directing it is passed in consequence of report submitted under S. 157 which report precedes an investigation. Thus, where a Magistrate held a magisterial enquiry into a case, after the police had made an investigation at the direction of the District Magistrate, and subsequently ordered the prosecution for perjury of the witnesses examined before him, held that the enquiry held by the Magistrate was not supported by any provision of the Code and that the orders for prosecution were consequently without jurisdiction. (Richards and Alston JJ.) Abdul Rahman v. King-Emperor,

3 Ind Cas 952 = 6 A L J 963 = 32 A 30= 10 Cr L J 424.

——Ss. 156, 159—Judicial inquiry—See ibid, S. 156,

4 Cr L J 334 (PC).

——Ss. 159 and 173—Police report under S. 173—Power of Magistrate to make preliminary investigation.

Section 159 empowers a Magistrate to whom a first information is submitted under S. 157 to make a preliminary investigation. But where the report on which the Magistrate takes action is a final report under S. 173, S. 159 does not apply to such a report. The Magistrate's powers are stated in cl. (3) of S. 173, and power to direct a further investigation seems to be implied in cl. (2), but both under that section and under S. 159 the Magistrate's

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powers seem to be confined to inquiry and orders regarding the offence to which the report relates. There are no provisions in Chap. XIV authorising a Magistrate to institute proceedings against the informant. (Irwin Esq.) Lachmanan Chetty v. King-Emperor,

U B R 1904 1st Qr. Criminal P. C. 2=1 Cr L J 539.

—S. 160.

——Penal Code (1860), S. 174 — Summons, if should specify time at which attendance is required—Summons specifying date but not time of day when attendance is required — Disobedience — Prosecution under S. 174, if justified : See Penal Code S. 174. (Mootham J.) Latoor Mal v. Emperor

AIR 1948 All 137 (2) = 49 Cr L J 109.

——Investigation—Bona fides of, successfully questioned —Evidence produced is looked upon with suspicion.

Where the investigation of a case is found to be tainted and defective, the same value cannot be attached to the evidence of witnesses as would be done in an ordinary case. Once the bona fides of the investigation are successfully questioned, it is only natural that the Court should look with suspicion on the evidence produced during the investigation. (Teja Singh and Bhandari JJ.) Amin Chand v. Emperor

230 I C 124 = 48 Cr L J 522 (Lah).

——Statements should not be recorded in single and comprehensive statement.

The record of the deposition of each witness in the Sessions Court must be a faithful record and it is improper to base it on the deposition as recorded by the committing Court. The statement of a witness should be taken in full as he deposes. The objects of cross-examination are defeated when a Judge or a Magistrate records statements and answers of the witness in a single and comprehensive statement, (Sen J.) Annubeg Mukimbeg v. Emperor

AIR 1944 Nag 320 = 1944 N L J 396 = ILR (1944) Nag 533 = 219 I C 337 = 46 Cri L Jour 601.

——Ss. 160. 161—Applicability and scope.

Section 160 deals with a Police Officer's power to require the attendance of witnesses, and all that can be deduced from that section is that in an investigation, an accused person is not bound to attend if the Police require him to do so. Also S. 161 does not prevent the Police Officer from examining and recording the statement of any person who may subsequently be accused of an offence since it is therein clearly laid down that the Police Officer may orally examine any person who may be acquainted with the facts and circumstances of the case and that such person shall be bound to answer all questions relating to such case, put to him by such officer other than the questions the answers to which would have the tendency to expose him to a criminal charge or to a penalty or forfeiture. A person who subsequently becomes an accused person can, then, be questioned by the Police; a fortiori can a person who is not brought before the Court at all, and his position in respect of the admissibility of statements made by him differs in no way from that of other prosecution witnesses whose veracity is to be tested in cross-examination in another case not arising out of the investigation in which the statements were made. In assessing the value of his testimony as elicited by cross-examination, the Magistrate must, of course, take into consideration the fact that, when the statements which are to be put to him were made he was in the position of being suspected of a criminal offence. (Grille J.) Shivlal Umraosingh v. Emperor

AIR 1938 Nag 110 = 10 R N 169 = 20 N L J 280 = ILR (1940) Nag 320=172 I C 156 = 39 Cr L J 68.

CRIMINAL P. C. (V of 1898), S. 160

——'Any person'—Meaning.

The expression "any person" used in Ss. 160, 161 and 162 has one and the same meaning and denotes one and the same class of persons. That class is described with sufficient accuracy in S. 160, in which the expression is for the first time used. Every person belonging to that class must be a person who is within the limits of the station of the police officer making the investigation, or in an adjoining station, who from the information given or otherwise appears to be acquainted with the circumstances of the case and who is bound to attend on an order in writing being issued to him by the said officer. An accused person who is in police custody cannot fall under this class of persons, for the simple reason that the question of a summons being issued to him and of the obligation to attend cannot possibly arise in his case, he being in police custody. (Prideaux, Kinkhede and Kolhatkar A. J. Cs.) Gola v. Emperor

AIR 1929 Nag 17 = 114 I C 273 = 24 N L R 158 = 12 A I Cr R 177=30 Cr L J 258 (FB).

——Applicability—Accused.

Sections 160, 161 and 162 do not apply to an accused person and do not affect or override S. 27 of the Evidence Act, which applies only to information received from a person accused of any offence in the custody of a police officer. A I R 1926 Pat 232 and AIR 1925 Mad 574; Appr. (Rutledge C. J., Heald, Duckworth, Chari and Maung Ba JJ.) Emperor v. Nga Tha Din

AIR 1926 Rang 116 = 96 I C 145 = 4 Rang 72 = 5 Bur L J 30 = 27 Cr L J 881 (FB).

—S. 161.

SYNOPSIS

1. Scope of the section.
2. "Making an investigation"
3. "May examine orally"
4. Record of statements
5. Copy of statements — See also under S. 162
6. "Any person supposed to be acquainted"
7. "Shall be bound to answer"
8. Statements of witnesses—Privileges
9. Refusal to answer

1. Scope of the section

——Ss. 161 and 162—Object.

Sections 161 and 162, in effect, contain legislative safeguards to protect an accused from over-zealous action of the police and so the non-compliance with their provisions cannot be lightly treated. (Radke A. J. C.) Shive Sharnagat v. State

AIR 1953 Bhopal 21 = 1953 Cr L J 990.

——Sections 161 and 162 are mandatory. (Derbyshire C. J. and Gentle J.) Sital Chandra v. Emperor

AIR 1942 Cal 495 (496) = 46 C W N 775 = 15 R C 308 = 202 I C 153 = 43 Cr L J 797.

——Two reports of same offence by two persons at different time in two places—The later in time should not be excluded as a statement made to a Police officer under S. 161. It can be used in evidence by the prosecution. (Varma and Rowland JJ.) Emperor v. Lalji Rai

AIR 1936 Pat 11 = 16 P L T 730 = 2 B R 180 = 8 R P 344=160 I C 181 = 37 Cr L J 235.

2. "Making an investigation"

——Where a driver of a motor car driving without a license, when asked for his name by the Superintendent of Police gave a wrong name.

Held, that the Superintendent of Police was not holding an investigation and the question put to the driver

CRIMINAL P. C. (V of 1898), S 161 — 2. "Making an investigation"

was not put under S. 161, Cr. P. Code, so as to give him benefit of S. 162. (Allanson J. on difference between Adami and Wort JJ.) Emperor v. Lachman Singh

AIR 1929 Pat 4 = 113 I C 587=7 Pat 715=10 P L T 244 = 11 A I Cr R 597=30 Cr L J 177.

3. "May examine orally"

——Ss. 161, 162 and 537 — Person not examined in course of investigation—Person can be cited as witness.

It is true that when a witness has been examined in the course of the investigation under S. 161, Criminal P. C., and his statement is reduced to writing, the non-availability of such statement for the use of the accused under S. 162, is a serious irregularity. But there is nothing in the Criminal P. C. to indicate that a person not examined at all in the course of the investigation, cannot be cited as a witness for the prosecution at the trial. (Jagannadhadas C. J. and Panigrahi J.) Biswabhusan Naik v State

AIR 1952 Orissa 289 = ILR (1952) Cu: 109 = 1952 Cr L J 1533.

——Sub-Inspector getting information from accused and acting on it—Whether can make him repeat that information before witnesses.

In principle, it is, of course, objectionable for a Sub-Inspector who has received information from the accused and is proceeding to act on that information to get him to repeat that information in the presence of witnesses. A Police Officer ought to expect to be believed when he gives evidence on oath.

It may, of course, also be possible that the Sub-Inspector was aware that there might be some doubt as to the admissibility of what the accused had stated at the Police Station as it was embodied in a confession made to a Police Officer, in which case, if he considered that the statement might be entirely inadmissible, he was justified in taking the statement again in circumstances, where it certainly was admissible. (Grille and Gruer JJ.) Bharosa Ramdayal v. Emperor

AIR 1941 Nag 86 (91) =1940 N L J 623=ILR (1940) Nag 679=13 R N 318=193 I C 6=42 Cr L J 390.

4. Record of statements

——S. 161 (3)—Recording of statements in diary.

Police officer noting in his diary gist of witness's statement and following it with a note that another witness has corroborated him — Held this was no statement but mere impression — Such manner of writing diary held wrong. (Krishnan J. C.) Khandhai v. State of V. P.

AIR 1953 Vind Pra 38=1953 Cr L J 1193.

——S. 161 (3)—Statement by witnesses.

Section 161 (3) gives discretion to a police officer to reduce into writing any statement made to him during investigation by the witnesses. If he exercises his discretion in favour of reducing the statement into writing, he is bound to make a separate record of the statement of each witness whose statement he records. (Radke A. J. C.) Shive Sharnagat v. State

AIR 1953 Bhopal 21=1953 Cr L J 990.

——S. 161 (3)—Statement of witnesses—Duty to reduce to writing.

In important criminal cases, it is the duty of the police to reduce to writing the statement of a witness separately as contemplated by S. 161 (3). Failure to perform the duty enjoined by law constitutes a flagrant attempt to circumvent the law and thereby to defeat the right which the law bestows. (Radke A. J. C.) Harinarain v. State

AIR 1953 Bhopal 8=1952 Cr L J 692.

CRIMINAL P. C. (V of 1898). S. 161 — 4. Record of statements

——S. 161 (3) — Record of statements in boiled form — Direction to jury—Duty of Judge—See ibid, S. 297

AIR 1952 Assam 169=1952 Cr L J 1663.

——Ss. 161, 297 — Non-compliance with S. 161—Attention of jury not drawn—Misdirection.

Where the police took down the statements of witnesses without complying with the provisions of S. 161, in that what was taken down was only a precis or condensed form of the statement and the Judge failed to direct the attention of the jury to this fact and warn the jury that they might well presume that if the statements had been taken down properly they might have contradicted the witnesses, it amounted to serious misdirection which vitiated the charge. (Harries C. J. and Bose J.) Mohammad Illias v. The State

AIR 1951 Cal 212=ILR (1951) 2 Cal 360=51 Cr L J 1581.

——Statements during investigation—See Criminal P. C. (1898), S. 154

ILR (1951) 1 Cal 539.

——S. 161 (3)—Where the investigating officer chooses to record the statements of witnesses made to him in the course of examination under S. 161 but does not record the statement of each witness separately, it is a clear violation of the mandatory provisions of S. 161 (3). The failure to do so very often results in the earlier statements of these witnesses not being made available to the accused, and the Court is not in a position to test the veracity of these witnesses. (Somasundaram J.) In re K. Venkataratnam

(1951) 1 M L J 430.

——Ss. 161, 162 and 418 — Record of statement jointly during investigation—Effect.

Where the statements of the witnesses were recorded in a joint form and not separately and no copy of them could be supplied to defence under S. 162, the conviction was set aside. (A. N. Sen and K. C. Chunder JJ.) Jageswar Sow v. The King

AIR 1950 Cal 565.

——Ss. 161 (3), 162 — Statements of witnesses—Duty of investigating officer — Effect of non-compliance with S. 161 (3) — Effect on admissibility of evidence of such witnesses.

The investigating officer who is not bound to record the statements of witnesses must record them separately where he chooses to do so. He cannot record in the form of a precis of what they said. But that would not make the evidence of the witnesses inadmissible though it may become relevant for considering their credibility. (Harries C. J. and Bachawat J.) Bejoy Chand Patra v. The State

AIR 1950 Cal 363=54 C W N 447=51 Cr L J 1307.

——S. 161 (3), as amended in 1945—Police officer merely making digest of what he learnt from persons examined.

Where a police officer making investigation examines a number of persons and records not what each of them had said but contents himself by recording the fact that he had questioned them and by making a digest of what he had learnt from them, there is a contravention of the provision of the sub-section. (Hemeon and Padhye JJ.) Shyama Rajaram Pardhan v. Emperor

AIR 1949 Nag 260 = I L R (1949) Nag 379 = 1949 N L J 315=50 Cr L J 669.

——Ss. 161 and 162 — Police Sub-Inspector's evidence as to what a witness had stated to him under S. 161 is not admissible and cannot be brought on record. (Ellis and Amir Ahmed JJ.) Crown v. Sahdullah

53 C W N (1 D R) 66.

CRIMINAL P. C. (V of 1898), S. 161 — 4. Record of statements

——S. 161 (3), as amended in 1945 — Recording of statements of witnesses by investigating officer — Individual statements if must be recorded.

Per Bell J. — It is not the law that the investigating officer must record individual statements of the witnesses under S. 161 (3) which says that he may and not that he must reduce the statement of a witness into writing. It is sufficient if he makes rough notes of the information given by each witness and later sets out the same in proper form in the case diary for the scrutiny of his superior officers in whose hands after all lies the subsequent control of the matter: A I R 1944 Mad 385, Approved.

It is desirable that the notes however and whenever taken by the investigating officer should be preserved: A I R 1945 Nag 1, Rel. on.

Per Horwill J. — Section 161 (3) does not make it incumbent on the investigating officer to record more than a gist of the statement of a witness as was the practice prior to the amendment of 1945. But it is desirable that statements should be recorded where reasons of urgency do not preclude this course. Section 161 (3) is intended to hit at the practice of writing against the names of certain witnesses after the first that they corroborated the statements of the earlier witness. (Horwill and Bell JJ.) Subba Reddi v. Emperor

AIR 1948 Mad 23=(1947) 1 M L J 193=60 M L W 179 = 1947 M W N 209 = I L R (1948) Mad 57 = 48 Cr L J 973.

——It is doubtful whether a statement to the police by the witness under S. 161 that he knew nothing about the occurrence is not a statement within the meaning of S. 161. (Suhrawardy and Duval JJ.) Aseruddin v. Emperor

AIR 1927 Cal 257 = 100 I C 353=53 Cal 980=7 A I Cr C 417=28 Cr L J 273

5. Copy of statements — See also under S. 162

——Ss. 161 and 162 — Copies of statements made in accordance with S. 161 but destroyed—Accused asking for copies—There is irregularity in trial.

Per Roxburgh J.—Failure to comply with S. 161 is an irregularity. If the accused does not ask for copies there is no irregularity in the trial; their non-existence from whatever cause cannot prejudice him. If they are recorded in accordance with S. 161, and are lost, destroyed by accident or intentionally (for whatever reason, good or bad) and the accused asks for copies there is an irregularity in the trial for failure to comply with the provisions of S. 162.

Per Chakravartti J. — Nothing can be an irregularity in a trial which does not affect the proceedings in Court. The fact that the investigating officer did not act in accordance with S. 161 of the Code, that is to say, though recording the statements of witnesses, did not record them in the form enjoined does not in itself amount to an irregularity in the trial. The officer was acting outside the Court. It is the breach of S. 162 of the Code, caused by the breach of S. 161, which constitutes the irregularity. The same is the position with regard to the destruction of the notes. Both are responsible for the result that the accused could not have a trial in the form provided for in the first proviso to S. 162, viz., he could not have access to the statements made by the witnesses to the police and could not use them to contradict the witnesses in the box. (Roxburgh and Chakravartti JJ.) Laxman Chandra v. Emperor

AIR 1948 Cal 278=1948 A W R Sup 81=1948 O A Sup 81 = 52 C W N 401 = ILR (1948) 2 Cal 364=49 Cr L J 469.

CRIMINAL P. C. (V of 1898), S. 161—5. Copy of statements

——Inquest report mentioning that no witness could give clue to murder — Prosecution of accused based on her alleged confession to some of the witnesses—Accused, if entitled to copy of inquest report.

An inquest report mentioned that none of the witnesses examined could give any clue to the murder. All of them said that the murder had been committed by some unknown person. The accused was charged with murder on certain confessions alleged to have been made by her to certain persons some of whom were also examined at the time of the inquest :

Held, the accused was entitled to get a copy of the inquest report and test the evidence of the prosecution witnesses who testified to the confession made by her, and that the inquest report did not come under S. 161, Criminal P. C. (Rankin C. J. and Costello J.) Rajeswari Debi v. Emperor

AIR 1933 Cal 861 = 37 C W N 732 = 6 R C 383 = 147 I C 1007=35 Cr L J 530.

——Statement of witnesses.

Section 172 does not provide for the recording of statements of witnesses by police during investigation. Any statements of witnesses that are so recorded, in whatever form these statements may be recorded, are recorded under S. 161, Criminal P. C., and the defence have the right to ask for a copy of such statements and to use the statements for the purpose of contradicting the witnesses for the prosecution. (C. C. Ghose and Cammiade JJ.) Sadhu Shaikh v. Emperor

AIR 1928 Cal 260 = 109 I C 355 = 32 C W N 280= 29 Cr L J 531.

6. "Any person supposed to be acquainted."

——Words "any person"—Scope.

Words "any person" in S. 161 are wide enough to include an accused person. (Bose and Sen, JJ.) Vimlabai Deshpande v. Emperor,

A I R 1945 Nag 8=I L R (1945) Nag 6.

——Ss. 161, 162, 1 7 — Detention of suspect by Police during the whole period of investigation without arrest, whether amounts to wrongful confinement.

The words "any person" occurring in S. 161, Criminal P. C., which must be read in conjunction with S. 162, Criminal P. C., include any person who may subsequently be accused of the crime. The Police Officers are fully authorised to require the personal attendance of the suspects during the investigation. The absence of an order in writing as required by S. 160, Criminal P. C., is no doubt an irregularity. It would certainly justify the failure or refusal of the suspects to obey the order but it can have no effect when the irregularity is waived by them. There can be no question that the investigating officers are entitled to summon the suspects, no less than others supposed to be acquainted with the facts of the case. But detention of persons suspected of crime by Police in a specified place for the purpose of investigation would amount to an offence of wrongful confinement, When the suspect's examination is over, he must either be arrested or allowed to depart. Informal detention without arrest is illegal and amounts to wrongful confinement, in however technical sense it may be.

When the restraint is imposed by a will or power exterior to one's own, that restraint is unlawful. (Niyogi, J.) In re Dinanath Ganpat Rai,

A I R 1940 Nag 186=I L R (1940) Nag 232=13 R N 58=1940 N L J 667=189 I C 591=41 Cr L J 757.

——Section 161 does not prevent the Police Officer from examining and recording the statements of any person

CRIMINAL P. C. (V of 1898), S. 161—6. "Any person supposed to be acquainted"

who may subsequently be accused of an offence. (Grille J.) Shiv Lal Umraosingh v. Emperor,

A I R 1938 Nag 110 (111) = 10 R N 169 = 20 N L J 280=I L R (1940) Nag 320=172 I C 156=39 Cr L J 68.

——'Any person.'

——The expression "any person" in S. 161 refers to a witness and not to the person who is accused of the offence. (Rupchand Bilaram, A. J. C.) Umer Duraz Munshi v. Emperor,

A I R 1925 Sind 237 = 86 I C 410 = 19 S L R 142= 26 Cr L J 778.

7. "Shall be bound to answer."

——Statements made by witnesses to Police under S. 161 cannot, except in very special circumstances, be regarded as giving information to public servant, (Spargo, J.) U Hlaing v. R. P. Abigail,

A I R 1937 Rang 232=10 R Rang 109=170 I C 854 =38 Cr L J 980.

——The information, even if it is given to a Police Officer in the course of an investigation under S. 161 in reply to questions put by him, is not excluded from the interpretation of the words of S. 182 of Penal Code (Davis, J. C. and Haveliwala, A. J. C.) Emperor v. Gopaldas Khemchand,

A I R 1936 Sind 94 = 9 R S 24 = 30 S L R 75=163 I C 910=37 Cr L J 870.

——A statement made by a witness to the Police under the provisions of S. 161, is not "an information given to a public servant" within the meaning of S. 182, Penal Code. (Dunkley, J.) Bo Ni Maung v. Emperor,

A I R 1935 Rang 97=8 R Rang 248 (1)=159 I C 95 =37 Cr L J 9 (2).

——Statement made to a Police Officer during investigation amounts to "information" within the provisions of S. 182, I. P. C. (Saunders, J.) Bodhan Gorain v. Emperor,

AIR 1933 Pat 555 (1)=14 P L T 541=6 R P 246 (1) 146 I C 234=34 Cr L J 1216.

——Ss. 161, 162 and 476—Penal Code, S. 193.

To obtain a witness's signature to his statement before the Police, then to examine him as to that signature, then to prosecute him in respect of the explanation which he gives in respect of it, is a procedure against the spirit of Ss. 161 and 162, and cannot form the basis of a prosecution under S. 193, I. P. C. (Pratt, J. C, and Hayward, A. J. C.) Emperor v. Mahomed,

6 S L R 277=19 I C 958=14 Cr L J 362.

——Investigation under—Answering questions put whether amounts to institution of criminal proceedings.

A person does not institute or cause to be instituted criminal proceedings within the meaning of S. 211, Penal Code, by answering questions put to him by a police officer during investigation under S. 161, nor does he thereby charge any person within the meaning of that section. (Arnold White C. J. and Bhashyam Iyengar J.) In re Verupatti Penchalugaddi,

6 M L T 133=4 Ind Cas 1061=11 Cr L J 164.

——False statement under S. 162, in answer to question put by police in investigation under S. 161 — See Penal Code, S. 211.

9 Cr L J 77 (Mad).

——Whether person bound to speak truth when examined under S. 161—See Penal Code, S. 193.

2 Cr L J 590 (Kathiawad).

8. Statements of witnesses—Privilege.

——Examination under — Question of privilege — See Penal Code (1860), S. 499.

A I R 1952 Nag 68=1952 Cr L J 438.

——Answers to questions under S. 161 during investigation, whether absolutely privileged.

CRIMINAL P. C. (V of 1898), S. 161—8. Statements of witnesses—Privilege

There is no absolute privilege in respect of the statements a witness is compelled to make from the witness-box and the rule of English law has not been incorporated in Indian statute law. The privilege is a qualified one: AIR (24) 1937 Nag 138, Foll.

Sub-section (2) of S. 161, Criminal P. C., allows a witness to refuse to answer questions which expose him to a criminal charge or to a penalty or forfeiture. It follows that a witness is not compelled to answer questions which would expose him to a charge of defamation. If he answers questions the witness can only avoid a charge of defamation if he succeeds in bringing his answers under the exceptions mentioned in S. 499, Penal Code. There is no essential difference between S. 132, Evidence Act and and S. 161 (2), Criminal P. C. If anything the proviso to the former gives some privilege but the latter does not. Criminal P. C. does not go further than S. 132 of the Evidence Act. Answers given to questions under S. 161, Cr. P. C., during investigation are therefore, not absolutely privileged. (Hidayatullah, J.) Hittu Bansi v. Sheolal.

AIR 1948 Nag 243 : 1947 NLJ 569 : 1948 AWR Sup 15 : 1948 OA Sup 15 : ILR (1947) Nag 899 : 49 Cr LJ 322.

——Statement under S. 162, if stands on different footing from statement on oath in Court.

It is extremely doubtful if a statement recorded under S. 162, Criminal P. C.. stands on a different footing from a statement on oath recorded by the Court, in an action for damages for having made such statement. (Rupchand Bilaram and Haveliwala, A. J. Cs.) Fakir Mahomed v. Fakir Mahomed Nanji.

AIR 1937 Sind 44 : 9 RS 236 : 30 SLR 431 : 168 IC 643.

9. Refusal to answer.

——Refusal by witnesses to answer questions put by Police—Penal Code, Ss. 176, 179 and 187.

A refusal to answer questions, asked by a Police officer under S. 161, is not punishable under Ss. 176, 179 and 187, Penal Code. (Willian Clark, C. J. and Reid, J.) Gul Hasan Shah v. King-Emperor.

27 PR 1908 Cr : 40 PWR 1908 Cr : 9 Cr LJ 105.

——S. 162.

SYNOPSIS.

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8. Section 162 and Evidence Act, S. 8.
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28. Refusal to grant copies of statement—Effect.
29. Failure to observe provisions of S. 162—Effect.
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1. Applicability, object and scope.

——Statement otherwise falling under S. 162, would not become admissible merely because it can be brought under S. 158 or S. 159, Evidence Act. (Wanchoo and Agarwala JJ.) Bhondu v. Rex.

AIR 1949 All 364 : ILR (1949) All 697 : 1949 ALJ 174 : 1949 AWRHC 265 : 50 Cr LJ 561.

——The object of S. 162, Cr. P. C., is to ensure that it should not be open to the Police in a criminal prosecution to give evidence of admissions which were either not in fact made or obtained by improper means. (Agarwala and Brough, JJ.) Satya Narayana v. Emperor.

AIR 1944 Pat 67 : 22 Pat 681 : 10 BR 494 : 16 RP 313 : 25 PLT 57 : 212 IC 298 : 45 Cr LJ 624.

——The prohibition of S. 162, Cr. P. C., extends to (1) all statements; (a) the statement need not be confessional; it applies equally to all statements, confessional or otherwise; (b) the statement need not be reduced into writing; it applies equally to all statements whether reduced into writing or not; (2) by whomsoever made; (a) the

CRIMINAL P. C. (V of 1898), S. 162 — 1. Applicability, object and scope

prohibition applies equally to statements made by any person, whether accused or not; (b) the person making the statement need not be in the Police custody while making the statement; but the statement (1) must be made to a Police Officer and (2) must be made in the course of an investigation under Chap. XIV. (Lodge and Pal, JJ.) Naresh Chandra v. Emperor.

AIR 1942 Cal 593 : ILR (1942) 1 Cal 436 : 46 CWN 180 : 75 CLJ 507 : 15 RC 497 : 204 IC 111 : 44 Cr LJ 145.

——Purpose of S. 162, Cr. P. C., is to protect accused persons from being prejudiced by statements made to Police Officers who, by reason of the fact that an investigation is known to be on foot at the time the statement is made, may be in a position to influence the maker of it and, on the other hand, to protect accused persons from the prejudice at the hands of persons who in the knowledge that an investigation has already started, are prepared to tell untruths. (Collister and Braund, JJ.) Emperor v. Aftab Mahammad Khan.

AIR 1940 All 291 : 1940 ALJ 206 : 1940 AWR 85 : 13 RA 55 : 188 IC 649 : 41 Cr LJ 647.

——Cross-examination of Investigating Police Officer—Evidence showing elements of doubt—Acquittal by jury, if can be interfered with.

When the Investigating Police Officer is allowed to be cross-examined by the defence, the Judge should conform to the provisions of S. 162, Cr. P. C., as it was with the object of guarding against a true case being spoilt by an unscrupulous Investigating Police Officer that these provisions were enacted.

In a criminal trial, certain persons who were named as witnesses in the First Information Report were not examined and there was no satisfactory explanation given for the omission. The man who wrote the ejahar was not examined though the Police Officer concerned denied having asked for a written ejahar. The Circle Inspector who came to the scene of occurrence and at whose instance the charge sheet was made was also not examined:

Held, that the procedure was improper and there were points on which it was open to the majority of the jury to hold that there were elements of doubt in the case, and that the verdict of acquittal should not be interfered with. (Mukerji and S. K. Ghose, JJ.) Debendra Chandra v. Emperor.

AIR 1934 Cal 458 : 6 RC 521 : 149 IC 139 (2) : 35 Cr LJ 904.

——Section 1, sub-S. (2) of the Code lays down that nothing contained in the Act shall apply to the Bombay Police. Therefore S. 132 does not exclude a statement before a Bombay police-officer from being proved except in so far as it is inadmissible under the Bombay City Police Act,

CRIMINAL P. C. (V of 1898), S. 162 — 1. Applicability, object and scope

1902. (Kemp, J.) Emperor v. Wahiduddin Hamiduddin No. (2).

AIR 1930 Bom 158 : 32 Bom LR 327 : 54 Bom 528 : 1930 Cr C 482 : 126 IC 333 : 31 Cr LJ 1003.

——Sections 162 and 172 do not apply to Calcutta Police. (Suhrawardy J.) Panchanan Mukerji v. Emperor.

AIR 1929 Cal 257 : 116 IC 160 : 33 CWN 203 : 12 AI Cr R 448 : 30 Cr LJ 577.

——The view that the provisions of S. 162 do not apply to a case of complaint is not justified by anything in that section. (Kotval, O. J. C.) Hari Mahadeo Gore v. Emperor.

AIR 1927 Nag 24 : 9 NLJ 167 : 99 IC 46 : 7 AI Cr R 170 : 28 Cr LJ 14.

——Under S. 162 no statement made by a witness to a police officer in the course of an investigation under Chap. 14 of the Code, if not reduced into writing can be used at the trial for any purpose whatsoever. It cannot be used either to corroborate or to contradict a witness, either for the benefit of the accused or against him. If such a statement had been reduced to writing, its use for any purpose whatsoever is also prohibited unless (a) it is the statement of a witness called for the prosecution (b) the Court has ordered the accused to be furnished with a copy, and (c) the written record of the statement has been duly proved. It may then be used within the limits set forth in the proviso to S. 162. (Campbell and Addison. JJ.) Bahadur Singh v. Emperor.

AIR 1926 Lah 367 : 95 IC 467 : 7 Lah 264 : 8 LLJ 174 : 27 PLR 379 : 27 Cr LJ 803.

——Under S. 162 no statement or any record thereof whether in a police diary or otherwise or any part of such statement made by any person to a police officer in the course of an investigation under Chapter 14 is admissible as evidence except as provided in the second paragraph of that section. (Newbould and B. B. Ghose, JJ.) Keramat Mondal v. Emperor.

AIR 1926 Cal 320 : 42 CLJ 524 : 92 IC 439 : 27 Cr LJ 263.

——Section 162, Cr. P. Code is clear enough to exclude any statement to police made by any person and directs that such statement shall not be used for any purpose. (Suhrawardy and Panton, JJ.) Bhagirathi Chowdhury v. Emperor.

AIR 1926 Cal 550 : 30 CWN 142 : 92 IC 174 : 27 Cr LJ 222.

——Statement of witnesses recorded by Police—If evidence.

Statements of witnesses recorded by the Police in the course of an investigation cannot be used in any way in the course of the trial except in the one way laid down by S. 162, Cr. P. Code, with the single exception in Cl. 2. It is very desirable that S. 162, Cr. P. Code should be clearly under-

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stood and strictly complied with. (Saunders, J. C.) Nga Ba Than v. Emperor.

AIR 1918 Upp Bur 16 : (1918) 3 UBR 81 : 46 IC 299 : 19 Cr LJ 715.

2. Statement.

——Statement to police.

Conduct of complainant merely pointing out place of occurrence to Investigating Officer does not constitute statement before Investigating Officer—Evidence of such conduct is not inadmissible—But if evidence is led that a witness when pointing out a plot of land to the Investigating Officer, told him that the occurrence had taken place on that land or made any other similar statement that statement would be inadmissible. (J. P. Mitter and Sen, JJ.) Radha Nath Dhara v. State.

AIR 1953 Cal 602 : 58 Cal WN 243 : 1953 Cr LJ 1377.

——Complaints regarding fresh embezzlements filed during investigation.

Routine complaints of new cases of embezzlement filed by persons concerned during investigation of a conspiracy charge cannot be said to be statements under S. 162 so as to render them inadmissible. (Wadsworth and Shahabuddin, JJ.) In re Swaminathan.

AIR 1945 Mad 284 : (1945) 1 Mad LJ 449 : 58 Mad LW 262 : 1945 MWN 361 (2) : 1946 Mad Rul 54 : 221 IC 299 : ILR (1946) Mad 219 : 47 Cr LJ 149.

——Evidence of tracker as to what he saw or did at identification of footprints during Police investigation.

Section 162, Cr. P. C., shuts out statements, written or oral, express or implied, made by witnesses to the Police during the course of the investigation; but care must be taken not to shut out evidence, of what a witness saw or did. Conduct must be distinguished from speech. A tracker can say in Court that during Police investigation, he recognized on a certain day at a certain place certain tracks, and that the tracks were of a particular person if he knew him already or of a person at the scene of the crime if he did not know him already. (Davis J. C. and Weston J.) Mor Mahomud v. Emperor.

AIR 1940 Sind 168 : 13 RS 81 : ILR (1940) Kar 487 : 190 IC 499 : 41 Cr LJ 924.

——Complainant's statement identifying accused.

The statement made by the complainant to the Investigating Officer to the effect that the accused was the person who had attempted to rob her is inadmissible in evidence in view of the provisions of S. 162, Cr. P. C. (S. K. Ghose and Henderson, JJ.) Krishna Chandra v. Emperor.

AIR 1935 Cal 311 : 62 C 918 : 39 CWN 488 : 8 RC 221 (1) : 158 IC 843 : 36 Cr LJ 1470 (1).

——Accused in custody—Statements, whether excluded.

CRIMINAL P. C. (V of 1898), S. 162—2. Statement

The statements contemplated in S. 162, Cr. P. C., refer to statements other than those made by the accused.

Where the accused is kept under detention soon after he makes the report, he is for all practical purposes in the custody of the Police although not formally arrested. In such a case, S. 162, Cr. P. C., does not come into operation to exclude the statements made by him in the course of the Police investigation. (Niyogi and Staples, A. J. Cs.) Rego v. Emperor.

AIR 1933 Nag 136 : 29 NLR 251 : Ind Rul (1933) Nag 153 : 143 IC 17 : 34 Cr LJ 505.

——Test.

So far as authenticity goes, a telegram stands in no better position than village gossip. There is no guarantee that a telegram received has actually been sent by the person who purports to send it and it undoubtedly would be the duty of the Police officer on receiving the telegram that an offence has been committed, to verify the fact that it was really sent as it purports to have been sent. Where the police officer went to the place from which the telegram was sent and examined the person by whom it purported to have been sent and he confirmed the fact of sending it and gave other details of the offence which he alleged to have been committed.

Held, that the statement of the person examined cannot be said to be a statement taken in the course of the investigation within S. 162, and was therefore, admissible in evidence. 1 MLW 355 and AIR 1925 Cal 831, Rel. on. (Phillips and Madhavan Nair, JJ.) Public Prosecutor v. Chidambaram.

AIR 1928 Mad 791 : 55 MLJ 231 : 28 MLW 187 : 10 AI Cr R 388 : 1 M Cr C 159 : 110 IC 461 : 29 Cr LJ 717.

——For the application of S. 162 there must be a statement which is capable of being recorded, and reduced to writing and, therefore, if a witness says: "I did not make any statement to the police," it cannot be a statement under S. 162. (Suhrawardy and Duval, JJ.) Aseruddin v. Emperor.

AIR 1927 Cal 257 : 53 Cal 980 : 100 IC 353 : 7 AI Cr R 417 : 28 Cr LJ 273.

3. Communication of identification.

——'Statement' — Identification parade by Police Officer.

The results of test identifications by a Police Officer would be inadmissible under S. 162. Identification by the witnesses of the object or person during a test identification is a statement which is ruled out by S. 162. (Krishnan, J. C.) Kartar Singh v. State of V. P.

AIR 1952 Vind. Pra. 42 : 1952 Cr LJ 986.

——Communication of identification to police not admissible in evidence.

Statements made by witnesses to a police officer are inadmissible in evidence under S. 162. A

CRIMINAL P. C. (V of 1898), S. 162—3. Communication of identification

distinction is to be made between the actual fact of identification which is a mental act on the part of the person identifying and the communication to a third person of this mental act. The communication of the mental act of recognition and identification to the police is hit by S. 132 but the evidence in Court subsequently by the actual identifier himself is not inadmissible under S. 162. Hence, a Judge should not allow the evidence as to what the witnesses stated to the police officer at the time of the identification to be brought on the record. (Malik C. J. and Bind Basni Prasad, J.) Daryao Singh v. State.

AIR 1952 All 59 : 1951 RD (HC) 281 : 1951 All Cr R 154 : 1951 All WR (HC) 622 : 1952 Cr LJ 265.

——Statement — Identification of a person.

(Per Mallappa, J.)—Where the girl points out the accused when questioned by the police officer as to whether the accused was the person who raped her it is a statement to the police officer within the meaning of S. 162 and is not admissible in evidence. (Venkat Ramaiya, Balakrishnaiya and Mallappa, JJ.) Krishniah v. Government of Mysore.

AIR 1950 Mys 44 : ILR (1951) Mys 1 : 51 Cr LJ 1097 (FB).

——Identification.

The word "identify" has a double meaning. It means the fact of actual recognition as well as the communication of that fact to third person. There is a distinction between on the one hand the actual fact of identification which is a mental act on the part of the person identifying, and on the other hand the communication to a third person of this mental act. The communication is of course a statement, but the identification by the identifier cannot possibly be a statement.

But a distinction between an actual verbal statement and some action on the part of the identifier disclosing the fact of his identification cannot legitimately be made. Both are hit by S. 162, Criminal P. C. The communication of his own mental act of recognition and identification to the police is what is hit by S. 162. Evidence in Court subsequently by the actual identifier himself is not inadmissible under S. 162 : AIR 1943 Cal 344 and AIR 1939 Cal 176, Commented. (Roxburgh and Ormond, JJ.) Surender Dinda v. Emperor.

AIR 1949 Cal 514 : ILR (1945) 2 Cal 513 : 48 Cr LJ 804.

——Identification of stolen property, if statement —Property recovered from accused by villagers—Police taking over charge of articles — List of articles seized with statement of circumstances under which they were seized.

Section 162, Criminal P. C., does not limit itself to statement of any particular kind. It embraces all kinds of statements made to a Police Officer in the course of an investigation. The evidence

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of the fact of identification is nothing but evidence of the statements which constitute the identification in a compendious and concise form. Any identification of stolen property in the presence of a Police Officer during investigation is a statement made to a Police Officer during investigation, and is, therefore, within the scope of S. 162, Criminal P. C. Pointing out by finger or not of assent in answer to a question is just as much a verbal statement as a statement by word of mouth. The witnesses should not be allowed to depose to the fact that they had identified the stolen property in the presence of the Police Officer. It is immaterial whether the identification is held at the thana or in the village.

The property which was said to have been recovered from the possession of the accused persons was recovered from their possession by the villagers before the Police appeared upon the scene. It was made over to one H for safe custody until the Police arrived and took charge of it. When the Police arrived, they took over the articles in the presence of twelve villagers and they drew up a list of the articles seized with a statement of the circumstances attending the seizure. In the remarks column, the summary of statement of witnesses was given:

Held, that it was not a search list. It was merely a memorandum drawn up by the Police Officer of the articles taken over by him from the custody of H. It being a record by a Police Officer of a summary of statements made to him during investigation by persons whom he examined, these statements could not be proved otherwise than as permitted under S. 162, Criminal P. C. (Lodge and Das JJ.) Khabiruddin v. Emperor.

AIR 1943 Cal 644 : 16 RC 483 : 77 CLJ 407 : 48 CWN 356 : 210 IC 409 : 45 Cr LJ 258.

——Section 162 excludes any evidence about the statements made by witnesses at the identification parade by the Police in the course of investigation. (Burn and Happell, JJ.) In re Kshatire Ram Singh.

AIR 1941 Mad 675 : 54 LW 69 : 1941 MWN 521 : 14 RM 299 : 196 IC 342 : 42 Cr LJ 848.

——Oral statement.

Where a witness says that he identified the accused before the Police Officer in the village, such evidence is admissible. (M. C. Ghose and Bartley, JJ.) Lala Lalung v. Emperor.

AIR 1939 Cal 176 : 68 CLJ 103 : 42 CWN 620 : 11 RC 577 : 179 IC 642 : 40 Cr LJ 240.

——Evidence of witness that he identified accused before Police Officer in village—Admissibility of.

Section 132, Criminal P. C., should be read upon its plain terms. According to it, a statement made by a witness to a Police Officer is not evidence at a trial. Where, however, a witness says that he identified the accused before the Police

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Officer in the village, such evidence is admissible. (M. C. Ghose and Bartley, JJ.) Lala Lalung v. Emperor.

AIR 1939 Cal 176 : 42 CWN 620 : 68 CLJ 103 : 11 RC 577 : 179 IC 642 : 40 Cr LJ 240.

——Examination of witness by Police Officer without identification parade—Effect.

It would be perfectly fair for a Police Officer to enquire from a witness, without holding an identification parade, whether he could identify certain person or not; it is a totally different matter to get that person to make a confession in front of a proposed witness and then see if the witness would be prepared to identify him in a farce called an identification parade, and to crown all this, commit perjury in Court by denying the incident. (Dalip Singh and Currie, JJ.) Jahangiri Lal v. Emperor.

AIR 1935 Lah 230 : 7 RL 58 : 150 IC 1056 : 35 Cr LJ 1180.

——Police evidence as to identification.

Evidence of police officers who give evidence with regard to the identification parades which were held and who depose to certain of the accused having been identified by prosecution witnesses in an identification parade is not inadmissible in evidence under S. 162, as their evidence does not relate to any statement made to the police but is a simple exposition of a fact or circumstances witnessed by themselves. (Findlay, J. C.) Ramadhin Brahmin v. Emperor.

AIR 1929 Nag 36 : 112 IC 51 : 11 AI Cr R 302 : 29 Cr LJ 963.

4. List of property.

——Statement in search list not placed before jury being inadmissible — Search list admitted merely to show that the article was seized — Fact that statement was not pasted held did not prejudice accused. (J. P. Mitter and Sen, JJ.) Radha Nath Dhara v. State.

AIR 1953 Cal 602 : 58 Cal WN 243 : 1953 Cr LJ 1377.

——'Statement'—List of stolen property.

Whether a list of stolen property is supplied in writing by a person to a police officer or it is prepared according to the oral statement made by him, provided it is supplied or prepared in the course of investigation, it amounts to a statement. (Teja Singh, C. J.) Jaila v. State.

AIR 1952 Pepsu 103 : ILR (1952) Patiala 273 : 1952 Cr LJ 1049.

——Statement — Dacoity case — Supplementary list of stolen articles.

In a dacoity the non-mention of a particular stolen article in the F. I. R. is by itself no strong ground for disbelieving the owner when subsequently he states that it was gone. It all depends upon circumstances, his status, the number of the articles that have disappeared and the confusion and the hurry. But, while the statement

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contained in the F. I. R., including the list of stolen articles, if any, is part of the earliest statement to the police, and therefore is admissible for corroboration. "A supplementary list" whether oral or written, given to the officer during investigation, is really a statement under S. 162 and therefore admissible. Admitting into evidence the supplementary lists of stolen properties is wrong, and against the provisions under S. 162. The practical consequences of non-mention of certain properties in the F. I. R. is a question of fact depending on the circumstances. (Krishnan, J. C.) Kartar Singh v. State of V. P.

AIR 1952 Vind. Pra. 42 : 1952 Cr LJ 986.

——List of stolen articles.

A list of stolen articles given to the police by a person subsequent to the commencement of the investigation is hit by S. 162 and is not admissible in evidence. (Harnam Singh, J.) Amar Singh v. The Crown.

AIR 1949 East Punj 315 : 51 PLR 110 : 50 Cr LJ 794.

——Section 162 has no reference to a list of stolen property. (Plowden, J.) Brij Lal v. Emperor.

AIR 1943 All 216 : 1943 ALJ 166 : 16 RA 25 : 1943 AWR 75 : 207 IC 15 : 44 Cr LJ 555.

——A list of stolen properties made and handed over to the Police in the course of the investigation cannot be admitted in evidence. (Bhide and Currie, JJ.) Sucha Singh v. Emperor.

AIR 1932 Lah 488 : Ind Rul (1933) Lah 241 : 34 PLR 405 : 142 IC 699 (2) : 34 Cr LJ 379.

——Prosecution for dacoity — List of stolen property prepared before investigation.

Lists of stolen property prepared in the presence of a Police Officer before the actual commencement of the investigation by the Police, cannot be excluded from evidence as being statements made to a Police Officer during investigation. (Raza and Pullan, JJ.) Emperor v. Narain.

AIR 1931 Oudh 83 : 8 OWN 31 : 6 Luck 582 : Ind Rul (1931) Oudh 184 : 131 IC 72 : 32 Cr LJ 630.

——List of stolen ornaments.

Where during a search, ornaments were found on the person of the accused's wife, and it was alleged that they were the ornaments stolen during the dacoity and a list handed over to the investigating police officer during the course of investigation included the ornaments.

Held, that the list being a statement within the meaning of S. 162, Cr. P. Code, was clearly inadmissible and its admission having caused misdirection, the verdict of the Jury and the sentence of the accused should be set aside. (C. C. Ghose and B. B. Ghose, JJ.) Fulbash Sheikh v. Emperor.

AIR 1929 Cal 448 : 120 IC 458 : 1929 Cr C 71 : 31 Cr LJ 127.

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5. "Statement made to a police officer".

——Non-compliance — Effect — Cochin Criminal P. C., S. 143—Notes taken by police officer contacting prosecution witnesses— Non-production of, if vitiates trial.

Section 143, Cochin Criminal P. C., refers to statements made by a person to a Police Officer in the course of an investigation and refers only to such statements if reduced into writing.

Where a Sub-Inspector had made notes when he had contacted the prosecution witnesses while the investigation was conducted by some other officer:

Held, that it was incumbent on the Sub-Inspector to produce those notes and the non-production of those notes did not vitiate the trial. AIR 1936 Nag 249, Dissent. (Kunhiraman C. J. and Sankaran, J.) Rama Krishna Pillai v. State.

1950 KLT 290.

——Statement to Police Officer in the course of investigation — Statements recorded by Special Deputy Tahsildar for procurement of grains are not inadmissible under S. 162. (Yahya Ali, J.) Venugopal v. Emperor.

AIR 1948 Mad 39 : 1947-2 MLJ 164 : 60 MLW 491 : 1947 MWN 484 : 48 Cr LJ 983.

——Per Horwill J:—Where the notes taken by the investigating Police Officer under S. 161 (3) give a very brief summary of the narrative found in the case diary prepared by him and do not take the form of summaries of individual statements made by the various witnesses, the investigating officer would be justified in objecting to the production of his notes.

See Criminal Procedure Code (5 of 1898), S. 131.

AIR 1948 Mad 23 : 48 Cr LJ 973.

——Statement to the board of enquiry— Sub-Inspector of Police present.

Where the fact of the making of the statements is proved not by a Policeman but by two responsible railway officials and it is also clear from their evidence that no improper means were used to obtain the statements, the mere fact that Sub-Inspector of Police was present when the statements were made is quite insufficient to bring in S. 162, Criminal P. C., the statements being not made to him but in his presence to the board of enquiry consisting of railway officials. The statements made in such an enquiry are admissible in evidence. (Agarwala and Brough, JJ.) Satyanarayana v. Emperor.

AIR 1944 Pat 67 : 25 PLT 57 : 22 Pat 681 : 10 BR 494 : 16 RP 313 : 212 IC 298 : 45 Cr LJ 624.

——Statement to private person on way to Police Station.

The statement made by the kidnapped woman to her brother as to the identity of the accused and as to his guilt while going to the Police Station is not to be excluded as the statement made

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by the witness to the police during the course of investigation under S. 162, Criminal P. C. (Davis C. J. and O'Sullivan, J.) Nur Muhammad v. Emperor.

AIR 1944 Sind 38 : 16 RS 205 : ILR (1944) Kar 86 : 211 IC 403 : 45 Cr LJ 393.

——Statement to third person in presence of Police.

Per Young, C. J. and Bhide, J.—The question whether an accused person is in custody or not is a question of fact and not of law. Equally, when an accused person makes a statement to another person in presence of the Police, whether that statement is made to the other person or to the Police is also a question of fact, and not of law. If, it is found on the facts of any case, that a statement made to a third person, was in reality intended to be made to the Police and was represented as having been made to a third person, merely as a colourable pretence in order to evade the provisions of S. 162, Cr. P. C., the Court will hold it to be excluded by that section. But it would be going too far to lay down that every statement made to a person assisting the Police during an investigation should be treated as a statement made to the Police and as such excluded by S. 162, Cr. P. C. The question is thus one of fact and must be decided in view of all the circumstances in which the statement sought to be proved was made. (Young C. J.; Tekchand, Dalip Singh, Monroe, Bhide, Din Mohammad and Ram Lall, JJ.) Hakam Khuda Yar v. Emperor.

AIR 1940 Lah 129 : 13 RL 1 : ILR (1940) Lah 242 : 188 IC 498 : 41 Cr LJ 591 (FB).

——Statements at time of identification of accused.

The statements made by prosecution witnesses, to the investigating officer at the time when they picked out the accused as the person who had committed the offence are hit by the prohibition contained in S. 132, Cr. P. C., and are inadmissible. (McNair and Khundkar, JJ.) Krishna Kahar v. Emperor.

AIR 1940 Cal 182 : ILR (1939) 2 Cal 569 : 43 CWN 1117 : 12 RC 550 : 187 IC 129 : 41 Cr LJ 405.

——Accused arrested by Police made to give statement to headman—Headman giving oral evidence of it—Practice condemned.

It is a discreditable and deplorable practice for the Police to take the accused whom they have arrested, to the headman and leave him there to make a statement to the headman and to allow the headman to give oral evidence of the statement, as the accused while making the statement is virtually in Police custody, the headman acting as the agent of the Police. (Mosely and Ba U, JJ.) Nga Ba Kyaing v. Emperor.

AIR 1936 Rang 131 : 8 R Rang 543 : 162 IC 6 : 37 Cr LJ 531.

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——A statement made by an accused to the Magistrate that a particular window was the window through which they effected their entrance is admissible in evidence. (Bhide and Currie, JJ.) Sucha Singh v. Emperor.

AIR 1932 Lah 488 : Ind Rul (1933) Lah 241 : 34 PIR 405 : 142 IC 699 (2) : 34 Cr LJ 379.

——Statements made to the Investigating Sub-Inspector in the course of an investigation are inadmissible in evidence under S. 162 of the Code of Criminal Procedure. (Sanderson, C. J. and Chotzner, J.) Harendra Nath v. Emperor.

AIR 1925 Cal 161 : 84 IC 451 : 40 CLJ 313 : 26 Cr LJ 307.

——Statements made to police—Use of.

See Penal Code S. 193.

7 Cr LJ 3 (All).

6. Statement made by an accused to a police officer.

(a) General.

(b) "Any person" does not include an accused.

(c) "Any person" includes an accused.

6. Statement made by an accused to a police officer.

—(a) General.

——Ss. 162 and 164—Practice—Murder case—Desirability of having statement of accused on first questioning recorded under S. 164.

Per Mack J.—The shutting out under S. 132 of what an accused person tells a police officer particularly in a case of murder when first questioned, opens the way for all kinds of statements being made in the committing Magistrate's Court and also at the trial in conformity with advised lines of defence, which are, of course, impossible to verify and places the prosecution at a great disadvantage. In cases of this kind, the police would do well to take an accused person before a Magistrate, whether he makes a confession or not, and have a statement recorded under S. 164, so that the accused person can be fixed to one explanation when placed in a position which becomes incriminating unless he can offer a satisfactory explanation for his behaviour. (Mack and Somasundaram, JJ.) Sitaramayya, In re.

AIR 1953 Mad 61 : 1952 Mad WN 365 : 1952 Mad WN Cr 77 : 1952-1 MLJ 690 : 65 MLW 775 : ILR (1953) Mad 169 : 1953 Cr LJ 245.

——Proceedings under S. 109, Cr. P. C.—Statement of person proceeded against before police—Statement is not confession—It is therefore not affected by S. 162 Cr. P. C. or by S. 26 Evidence Act and is admissible in evidence.

See Evidence Act (1872), S. 26.

AIR 1950 All 134 : 51 Cr LJ 436.

——Statement by accused to police—Admissibility.

Statement of accused to Police during investigation is not admissible even when the accused was

CRIMINAL P. C. (V of 1898), S. 162—6. "Statement made by an accused to a police officer—(a) General not charged with offence, at the time of making statement. (Roberts, C. J. and Dunkley, J.) Shwe Pru v. The King.

AIR 1941 Rang 209 : 1941 Rang LR 346 : 197 IC 350 : 43 Cr LJ 157.

——Admissibility.

Statement by accused in Police custody after presistent questioning — It may negative the impression that the statement is voluntary. (Burn and Mockett, JJ.) Public Prosecutor v. Munigan.

AIR 1941 Mad 359 : 1940 MWN 1272 : 52 LW 942 : (1941) 1 MLJ 227 : ILR (1941) Mad 503 : 14 RM 126 : 195 IC 76 : 42 Cr LJ 664.

——Criminal trial—Statements of accused in police custody.

Per Sankaran Nair, J.—Statements of accused in police cusody are notoriously untrustworthy. (Sankaran Nair and Sadasiva Aiyar, JJ.) In re Vaithinatha Pillai.

(1912) MWN 825 : 20 IC 721 : 14 Cr LJ 465.

6. Statement made by an accused to a police officer.

—(b) "Any person" does not include an accused.

——Section 10, Evidence Act, does not avoid, in appropriate cases, the operation of either S. 25, Evidence Act or of S. 162, Cr. P. C. (Davis J. C.) Pritam Hariomal v. Emperor.

AIR 1939 Sind 185 : ILR (1939) Kar 449 : 12 RS 90 : 184 IC 145 : 40 Cr LJ 882.

——True test of.

The better and truer test of the admissibility of statements made by the accused to the Police is whether the statement is incriminating in itself, or exculpatory. If the statement is incriminating in itself, an accused will not desire to put it in evidence; if it is exculpatory in itself, but may by relation to the other evidence be made an incriminating statement, then it is admissible in evidence, because the accused's use of that statement as an exculpatory statement may well be permitted to prevail to his advantage over the use by the prosecution of that statement as an incriminating statement. (Davis, J. C.) Pritham Hariomal v. Emperor.

AIR 1939 Sind 185 : ILR (1939) Kar 449 : 12 RS 90 : 184 IC 145 : 40 Cr LJ 882.

——Tests—Distinction between confessions and statements of fact.

A useful test as to the admissibility of statements made to the Police is to ascertain the purpose to which they are put by the prosecution. If the prosecution rely on the statements of the accused to the Police as being true, then they may, and in many cases will, be found to amount to confession. If, on the other hand, the statements of the accused are relied on not because of their truth but because of their falsity, they will be ad-

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missible as admissions. (Mockett, J.) Seshapani Chetty v. Emperor.

AIR 1937 Mad 209 : 1936 MWN 1241 : 45 MLW 100 : 9 RM 411 : (1937) 1 MLJ 154 : ILR (1937) Mad 358 : 166 IC 917 : 38 Cr LJ 323.

——Evidence Act, S. 30—Statement of co-accused —When to be used against accused.

Section 162, Cr. P. C., provides that no statement made by any person to a Police Officer in the course of an investigation shall be used for any purpose at the subsequent trial subject to the exception that such statements may be used to contradict witnesses for the prosecution. This section refers only to statements made by witnesses and not to statements by an accused person. Therefore, statements made by a co-accused to the Police might be admissible against himself, but they would be inadmissible as against the accused by the ordinary rule that hearsay evidence is excluded. This rule may briefly be stated as meaning that any statement made by a person who is alive and has not been called as a witness is inadmissible to prove the truth of that statement. Under S. 30 of the Evidence Act, the Court may take into consideration the confession of a co-accused. Where, however, the co-accused makes no confession but throws the blame entirely on the accused and tries to exculpate himself, such statement cannot be taken against the accused. (Pollock, A. J. C.) Potram v. Emperor.

AIR 1935 Nag 125 (2) : 7RN 173 : 31 NLR 246 : 155 IC 258 : 36 Cr LJ 740 (2).

——Although the statement made by the accused to the Police is not barred under the provisions of S. 162, it would not be admissible under S. 27, Evidence Act if it is held to be of the nature of a confession if no material fact was discovered in consequence of the information received. But the conduct of the accused can certainly be taken into account. Information received from a person accused of an offence is not a statement within the meaning of S. 162 (1), Cr. P. C. as he is not a person, who from the information given or otherwise appeared to be acquainted with the circumstances of the case whom the Police were entitled to examine under the provisions of Ss. 130 and 162, Cr P. C. Though S. 162 applies to statements of persons examined as witnesses by the Police in the course of an investigation, it does not apply to the statement of an accused person. (Addison J.) Mahomed v. Emperor.

AIR 1934 Lah 695 : 35 PLR 738 : 7 RL 674 : 155 IC 260 : 36 Cr LJ 697.

——Use against accused.

Every statement made by accused to Police is not a confession and statement which is not of an incriminating character is admissible. The crucial question is, what use does the prosecution attempt to make of the statement. If that statement is useful to the Crown, because it can be shown to be

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false, then it is admissible. If, on the other hand, it is useful because it is believed to be true, then it would be analogous to a confession and it cannot safely be admitted. (Ferrers, J. C. and Aston, A. J. C.) Misri v. Emperor.

AIR 1934 Sind 100 : 7 RS 52 : 151 IC 437 : 35 Cr LJ 1332.

——Applicability to accused.

Section 162, Cr. P. C., is not inapplicable to accused persons. (Jackson and Cornish, JJ.) Kalesha v. Emperor.

AIR 1931 Mad 779 : 34 LW 388 : 1931 MWN 715 : 62 MLJ 71 : Ind Rul (1932) Mad 108 : 135 IC 364 : 33 Cr LJ 132.

——S. 162 applies to witnesses and not to the accused under trial. AIR 1927 Cal 17 Foll. (Mukerji and Graham, JJ.) Newaj Ali Molla v. Emperor.

118 IC 368 : 33 CWN 257 : 30 Cr LJ 916.

——Mere admissions.

An accused person did not know the contents of the previously made statement by another co-accused; he did not know that he was being charged with any offence he had not in fact been charged by the police with any offence; he was not in custody, and under such circumstances he made a statement.

Held, that the statement was a mere admission and admissible in evidence against the accused but not against his co-accused. AIR 1927 Cal 17, Rel. on. (Courtney Terrell, C. J. and Adami, J.) Raj Kumar Singh v. Emperor.

AIR 1928 Pat 473 : 111 IC 721 : 9 PLT 449 : 11 AI Cr R 143 : 29 Cr LJ 913.

(Held overruled by AIR 1939 PC 47 : 40 Cr LJ 364 in AIR 1948 Pat 62 : 48 Cr LJ 565.)

——Statement of accused after arrest.

The word "statement" in S. 162, Cr. P. Code, is a very general word. It is intended to refer to statements recorded under the provisions of Ss. 160 and 161, Cr. P. Code. A clear distinction is drawn in S. 173, Cr. P. Code, between "persons who appear to be acquainted with the circumstances of the case" and .'the accused" and this must raise a doubt whether the phrase "persons supposed to be acquainted with the facts and circumstances of the case" in S. 161 includes "an accused" after arrest, but the side note to S. 161 can be used to assist to come to the conclusion that S. 161 is not intended to apply to an arrested accused. Therefore it follows that S. 162 does not refer to statements made by an accused after arrest. AIR 1926 Rang. 116 (F. B.), Foll. (Findlay, J. C. and Macnair, A. J. C.) Sheobalak Prasad v. Emperor.

AIR 1928 Nag 108 : 108 IC 442 : 11 NLJ 7 : 9 AI Cr R 408 : 29 Cr LJ 400.

——S. 162 applies to the statements of persons examined as witnesses by the police in the course of investigation and not to the statement of an accused person and it does not override or modify the provisions of S. 27 of the Evidence Act. (Shadi

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Lal, C. J. and Addison, J.) Rannun v. King Emperor.

AIR 1926 Lah 88 : 94 IC 901 : 7 Lah 84 : 27 PLR 583 : 27 Cr LJ 709.

——Statements of accused during investigation.

No doubt S. 162 of the Cr. P. Code of 1923 has altered the previous law so as to completely exclude statements made by witnesses during the course of an investigation, except for certain limited purposes, yet the statements of accused persons provided they do not amount to a confession, are still admissible in law. The main object of the Legislature in effecting the amendment was to prohibit the use of the statements of prosecution witnesses as corroboration under S. 157 of the Evidence Act. The general provisions of the law with regard to the admissibility of statements made by accused persons like other admissions do not seem to be affected. (Mullick, A. C. J. and Jwala Prasad, J.) Jagwa Dhanuk v. Emperor.

AIR 1926 Pat 232 : 5 Pat 63 : 7 PLT 396 : 93 IC 884 : 27 Cr LJ 484.

——The words "statement of any person" appearing in that section refer to the statement of any witness in the course of a police investigation and not to the statement of an accused person in respect of whom such investigation is held and they can only be excluded under S. 25 of the Evidence Act if they are in the nature of incriminating statements and are used by the Crown as such. A useful test as to the admissibility of statements made to the police is to ascertain the purpose to which they were put by the prosecution. AIR 1925 Sind 237, Foll. (Kincaid, J. C. and Rupchand Bilaram, A. J. C.) Hussainbibi v. Emperor.

AIR 1926 Sind 151 : 20 SLR 74 : 93 IC 248 : 27 Cr LJ 456.

——Not covered.

The statement of any person in S. 162 refers to the statement of any person examined as a witness and not to the statement of any accused person in respect of whom the investigation is being held. (Kennedy J. C. and Rupchand Bilaram, A. J. C.) Adho v. Emperor.

AIR 1925 Sind 257 : 86 IC 961 : 19 SLR 6 : 26 Cr LJ 897.

——Not covered.

The words "statement of any person" in S. 162, Cr. P. C., refer to the statement of any witness in the course of a Police investigation, and not to the statement of an accused person in respect of whom such investigation is held. Such parts of a confessional statement as lead to discovery of incriminating facts as also statements made to the Police by an accused person which are not of an incriminating nature are admissible. (Rupchand Bilaram, A. J. C.) Umer Duraz Munshi v. Emperor.

AIR 1925 Sind 237 : 86 IC 410 : 19 SLR 142 : 26 Cr LJ 778.

CRIMINAL P. C. (V of 1898), S. 162 — 6. Statement made by an accused to a police officer — (b) "Any person" etc.

——Statements not amounting to confession made to Police—Admissibility in evidence.

Statements made by accused to the Police and reduced to writing, which are not confessions within the meaning of s. 25 Evidence Act, but are admissions, are admissible in evidence, on being proved by oral evidence. The admission should not, however, amount to admission of guilt. What S. 25 Evidence Act prohibits is confession and not admission. 3 NLR 51, 13 OC 7, 6 B 34 and 37 C 467, Discussed. (Mr. Batten and Mr. Stanyon.) Ganpati v. Emperor.

6 NLR 180 : 8 Ind Cas 1181 : 12 Cr LJ 60.

——Statements made by accused persons.

Statements to police by accused persons, which do not amount to admissions of guilt but fell against the accused are admissible in evidence. The question whether the particular statement positive or negative, verbal or expressed by conduct, is or is not a confession, should be decided according to the circumstances of each case. (Lawrence Jenkins, C. J. and Carnduff, J.) Barindra Kumar Ghose v. Emperor.

37 C 467 : 14 CWN 1114 : 7 Ind Cas 359 : 11 Cr LJ 453.

6. Statement made by an accused to a police officer.

—(c) "Any person" includes an accused.

——Ss. 162 and 174.

Statements made to police at inquest cannot be used as substantive evidence—Statement by person at time when there was no suspicion against him, also cannot be used as substantive evidence. (Koshi, C. J. and Gangadhara Menon J.) Kuruvila Joseph v. State.

AIR 1952 Trav Co 300 : 1952 Ker LT 216 : ILR (1952) TC 261 : 1952 Cr LJ 1290.

——'In the course of investigation.'

A statement by the accused person to the police given by way of defence to the allegations in the first information report but not as a counter-report falls within S. 162 and is admissible in evidence: AIR 1941 Oudh 359 and AIR 1942 Oudh 60 (SB), Disting. (Rahman J.) Amanat Ali v. The Crown.

Pas Cas 1950 Lah 626 : 51 Cr LJ 1550.

——Statement by accused not admissible against co-accused—(Case from Fiji.)

A statement to the police by an accused is inadmissible against co-accused. (Lords Porter, Oaksey, Morton of Henryton and Macdermott.) Walli Mohammad v. The King.

AIR 1949 PC 103 (PC) : 53 CWN 318 : 1949 ALJ 154 : 1949 MWN 320 : 1949 AWRPC 237 : 1949 All Cri Cas 36 (2) : 50 Cr LJ 340 (PC).

——Applicability.

Section applies to statements made by accused person if other conditions of the section are satisfied: AIR 1939 PC 47, Foll.; AIR 1927 Cal 17 and AIR 1928 Pat 473 held overruled by AIR 1939 PC

CRIMINAL P. C. (V of 1898), S. 162 — 6. Statement made by an accused to a police officer — (c) "Any person" etc.

47 : 40 Cr LJ 364. (Das and Dalziel JJ.) Akal Sahu v. Emperor.

AIR 1948 Pat 62 : 230 IC 167 : 13 BR 462 : 26 Pat 49 : 48 Cr LJ 565.

——Ss. 162, 164—Evidence of what accused said when arrested, is denied to defence under Indian procedure.

In view of the provisions of S. 162, Cr. P. C., it is not possible for an arrested person to make a statement to the Police which can be used in evidence at the trial. Evidence of what an accused person said when arrested—often so valuable to innocent accused according to English experience—is denied to the defence under the Indian procedure. But an accused person can, if he knows it, make a statement of his version of the case before a Magistrate. (Burn and Mockett, JJ.) In re Appalanarasayya.

AIR 1941 Mad 101 : 52 LW 495 : 1940 MWN 937 : (1940) 2 MLJ 715 : 13 RM 581 : ILR (1941) Mad 81 : 192 IC 586 : 42 Cr LJ 308.

——The words "any person" in S. 161, Criminal P. C. which must be read in conjunction with S. 162, Criminal P. C., include any person who may subsequently be accused of crime. (Niyogi, J.) In re Dinanath Ganpat Rai.

AIR 1940 Nag 186 : ILR (1940) Nag 232 : 13 RN 58 : 1940 NLJ 667 : 189 IC 591 : 41 Cr LJ 757.

——S. 162 (1)— Statement even when made by person ultimately accused, is not admissible. AIR 1927 Cal 17 : 28 Cr LJ 99 ; AIR 1928 Pat 473 : 29 Cr LJ 913 Overruled.

The words "any person" in S. 162 (1), Criminal P. C., in their ordinary meaning would include any person though he may thereafter be accused. Investigation into crime often includes the examination of a number of persons, none of whom or all of whom may be suspected at the time. The first words of the section prohibiting the statement, if recorded, from being signed, must apply to all the statements made at the time and must therefore apply to a statement made by a person possibly not then even suspected but eventually accused. "Any such statement" must, therefore, include such a case; the words of the section, therefore, lead to the conclusion that the statement is not admissible even when made by the person ultimately accused.

(Even though the statement in question was wrongly admitted by Courts in India, their Lordships, following the rule of the Patna High Court expressed in S. 537, Criminal P. C., refused to set aside the convictions, since there was ample evidence to establish the guilt of the accused and because the admissibility did not result in failure of justice. AIR 1927 Cal 17 : 28 Cr LJ 99; AIR 1928 Pat 473 : 29 Cr LJ 913 Overruled. (Lords Atkin, Thankerton, Wright, Porter and Sir George Rankin.) Narayana Swami v. Emperor.

AIR 1939 PC 47 : 1939 AWR 35 : 1939 MWN 185 : 11 RPC 166 : 20 PLT 265 : 49 LW 349 : 5 BR 449 : 6 Cut LT 25 : 1939 OWN 282 : ILR (1939) Kar (PC) 123 Sup : 43 CWN 473 : 1939 ALJ 298 : 41 Bom LR 428 : 41 PLR 272 : 69 CLJ 273 : (1939) 1 MLJ 756 : 66 IA 66 : 18 Pat 234 : 180 IC 1 : 40 Cr LJ 364 (PC).

——Admission of guilt by accused not leading to discovery of relevant facts—Evidence of such admission, if admissible.

Where an information given by an accused to the Police admitting his guilt, does not lead to the discovery of any relevant fact concerning the offence, evidence of what that information was is inadmissible. (Burn and Lakshmana Rao, JJ.) In re Uppara Dodda Narasa.

AIR 1939 Mad 59 : 48 LW 601 : 1938-2 MLJ 771 : 11 RM 593 : 1938 MWN 1116 : 179 IC 518 : 40 Cr LJ 211.

——Use of, in trial, if proper.

No statement made by an accused person before the Police could be used as evidence against him in a judicial trial. The statements of accused persons recorded by a Magistrate or by a Court of Session can be considered against them as there is a provision in the Criminal P. C., to that effect; but a statement said to have been made by an accused person to a Police Officer in the course of a Police investigation cannot be utilised by the prosecution or by the Court against the accused nor can any inference adverse to the accused be drawn from such statement alleged to have been made by the accused to the investigating Police Officer. (Nanavutty, J.) Kanhaiya Lall v. Emperor.

AIR 1937 Oudh 331 : 1937 OWN 505 : 9 RO 432 : 168 IC 58 : 38 Cr LJ 491.

——The expression "statement made by any person" in Cl. 1 of S. 162, Criminal P. C., includes statements by persons accused of the offence under investigation. (Reilly, Ananta Krishna Ayyar and Sundaram Chetty, JJ.) Syamo Maha Patro v. Emperor.

AIR 1932 Mad 391 : 1932 MWN 305 : Ind Rul (1932) Mad 338 : 55 Mad 903 : 35 MLW 705 : 62 MLJ 742 : 137 IC 9 : 33 Cr LJ 418 (FB).

——Murder of child—Accused showing place where jewels were hidden:

Held, that the statement was within the purview of S. 162, and could not be used except in the special manner provided in that section. (Jackson and Cornish, JJ.) Kalesha v. Emperor.

AIR 1931 Mad 779 : 1931 MWN 715 : 34 LW 388 : 62 MLJ 71 : Ind Rul (1932) Mad 108 : 135 IC 364 : 33 Cr LJ 132.

——To show that subsequent statements were after-thought.

Section 162, Criminal P. C., was intended to prevent the user of statements made by the accused to the Police, and questions designed to show, by process of elimination, that matters subse-

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quently mentioned by the accused were omitted from such statements are within the mischief aimed at by the section. (Beaumont C. J. and Murphy, J.) Issuf Mahomed v. Emperor.

AIR 1931 Bom 311 : Ind Rul (1931) Bom 396 : 33 Bom LR 305 : 55 B 435 : 133 IC 748 : 32 Cr LJ 1077.

——Statement of accused.

It is wrong for the Judge to allow a mashirnama (police report) containing the statement of the accused regarding the place of crime to be exhibited and to refer to that report in his judgment. (Percival, J. C. and Rupchand, A. J. C.) Dur Mahomed v. Emperor.

AIR 1930 Sind 305 : 1930 Cr C 1142 : 128 IC 684 : 32 Cr LJ 178.

——S. 162 contains a general provision embracing all statements made by persons examined in the course of an investigation. (Prideaux, Kinkhede and Kolhatkar, A. J. Cs.) Gola v. Emperor.

AIR 1929 Nag 17 : 114 IC 273 : 24 NLR 158 : 12 AI Cr R 177 : 30 Cr LJ 258 (FB).

——Under S. 162 no statement made to the police by "any person", whether accused or witness, during an investigation can be even mentioned in evidence except as under S. 162. (Hallifax and Kinkhede, A. J. Cs.) Dadi Lodhi v. Emperor.

AIR 1926 Nag 368 : 95 IC 59 : 27 Cr LJ 731.

——Prior to arrest.

Statements made by accused to police officer before his arrest are inadmissible and the investigating officer cannot be made to disclose them in his examination as prosecution evidence. 3 NLR 51 and 6 NLR 180, Dist. (Kotval, A. J. C.) Sheosatyanarayanlal v. Emperor.

AIR 1926 Nag 1 : 91 IC 945 : 8 NLJ 217 : 27 Cr LJ 161.

——Admissibility.

Any incriminating statement made by an accused person at an inquiry held under S. 161, Cr. P. Code, would be excluded at the trial under S. 25 of the Evidence Act, as having been made to a Police officer, and as such of no material use at the trial. (Rupchand Bilaram, A. J. C.) Umer Duraz Munshi v. Emperor.

AIR 1925 Sind 237 : 86 IC 410 : 19 SLR 142 : 26 Cr LJ 778.

——Use of statements made to police officer in evidence.

Statements of witnesses made to police officers during investigation and reduced to writing cannot be used in evidence against the accused. Nor can the statements of the accused themselves while under arrest reduced to writing and entered into a special diary by the police in evidence against the accused. (Knox and Karamat Hussain, JJ.) Emperor v. Chandan Singh.

8 Ind Cas 259 : 11 Cr LJ 612 (All).

——S. 411, I P.C.— Offence under — Statement made to Police—Admissibility.

CRIMINAL P. C. (V of 1898), S. 162 — 6. Statement made by an accused to a police officer — (c) "Any person" etc.

A statement made by a person accused of offence under S. 411, I. P. C., to the Police as to how he came by the goods, which are alleged to be stolen property, cannot be used in evidence against him. (Robertson, J.) Khuda Baksh v. Emperor of India.

11 PLR 1905 : 2 Cr LJ 128.

——S. 162 (1)—Statement of accused—Use of, in evidence.

Section 162 (1) forbids the use in evidence of the statement made by the accused to the police. (Geidt, J.) Emperor v. Robert Stewart.

31 C 1050 : 8 CWN 528 : 1 Cr LJ 451.

7. S. 162 and Evidence Act, S. 27.

——S. 162 (1)—"Statement made by any person"—Statement by accused.

A statement made by an accused person to the police during investigation is strictly inadmissible in evidence although it explains the production of property. (Mack and Somasundaram, JJ.) In re Vokklingara Yenatappa.

AIR 1952 Mad 535 : 1952-1 MLJ 62 : 1952 Mad WN 974 : 1952 Mad WN (Cr) 286 : 1952 Cr LJ 1150.

——Effect of amendment in 1941— Statement to police leading to discovery, may be proved—Evidence Act (1872), S. 27.

The effect of the amendment to S. 162, Criminal P. C., by Act XV (15) of 1941, is that a statement falling under both the sections, i.e., S. 162, Criminal P. C., and S. 27, Evidence Act, may be proved against the person making it subject to the limitations prescribed by the latter section. (Chowdhury, J. C.) State v. Kali.

AIR 1951 Him. Pra. 28 : 1952 Cr LJ 267.

——Confessional statements made in Police custody

Generally speaking, statements of a confessional nature whilst in Police custody cannot be used for any purpose except as mentioned in S. 162 (1), Criminal P. C. By reason, however, of Cl. (2) of that section as amended in 1941, such statements as come under S. 27, Evidence Act, may be proved as against the person making them. (Khundkar and Das, JJ.) Satish Chandra Seal v. Emperor.

AIR 1945 Cal 137 : 18 RC 99 : ILR (1944) 2 Cal 76 : 219 IC 310 : 46 Cr LJ 580.

——Section 162 is not a "specific provision to the contrary" i.e., contrary to the provision contained in S. 27, Evidence Act, as the two can certainly co-exist. Section 162 applies only to statements made (1) to the Police and (2) in course of an investigation under Chap. XIV. To this extent, such statements, though leading to discovery, may not be evidence and the operation of S. 27, Evidence Act, may be affected. But outside this limit, there still remains a wide field left for the application of the section.

Section 27, Evidence Act, no doubt, makes a special provision for statements leading to dis-

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covery. But this special provision applies to a much wider field. It is not limited in its operation, like S. 132, Criminal P. C., to a particular investigation. This fact alone should suffice to allow S. 162, to override S. 27, Evidence Act. Further, S. 27, Evidence Act, containing this general provision was already there when S. 162, Criminal P. C., was enacted providing for a special case of investigation and laying down how much of the fruit of this investigation can be used and for what purposes. The rule 'leges posterious priores contrarias abrogant' — when two statutes are contrary in matter, the latter abrogates the former—will apply to his case, and, to the extent indicated above, S. 162, Criminal P. C., will abrogate S. 27, Evidence Act. The Evidence Act itself certainly is not 'special' in relation to the rules of evidence contained in the Criminal Procedure Code for the purposes of criminal proceedings. Section 27, Evidence Act, is also not 'special law' in relation to the rules regarding statements made in course of a particular class of investigation conducted under the special provisions of Chap. XIV, Criminal P. C. The prior enactment here is not therefore 'special' and subsequent enactment 'general' within the meaning of the maxim 'generalia specialibus non derogant'.

A statement by the accused to a Police Officer made in course of an investigation under Chap. XIV, prima facie comes within the prohibition of S. 132, Criminal P. C., even if such statement relates to fact thereby discovered.

In the course of an investigation under Chap. XIV, the accused made a statement to a Police Officer as follows: "I had thrown the opium on the roadside at X" and this statement led to the discovery of the opium:

Held, that the statement was inadmissible under S. 162, Criminal P. C.

Held, further (Per Pal, J.)—That even if it was not barred by S. 162, that portion of the alleged statement which purported to ascribe the authorship of the "act of throwing" to the accused himself was not admissible in evidence under S. 27, Evidence Act. The admissible portion of the information, must therefore, be to the effect that "gunny bag was thrown into X".

(Per Lodge, J.)—If evidence were given that the accused stated 'I threw the opium into the spot' the whole of that statement would be admissible under S. 27, Evidence Act. (Lodge and Pal, JJ.) Naresh Chandra v. Emperor.

AIR 1942 Cal 593 : 15 RC 497 : ILR (1942) 1 Cal 436 : 46 CWN 180 : 75 CLJ 507 : 204 IC 111 : 44 Cr LJ 145.

——Section 162, does not affect S. 27, Evidence Act. (Beaumont, C. J. and Sen, J.) Biram Sardar v. Emperor.

AIR 1941 Bom 146 : 13 RB 359 : 43 Bom LR

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157 : ILR (1941) Bom 333 : 194 IC 122 : 42 Cr LJ 519.

——Ss. 162, 1 (2)—Section 162, Criminal P. C., contains provisions plainly and directly, and. therefore, specifically affecting S. 27, Evidence Act, quoad statements made under that section by an accused person to a Police Officer in the course of an investigation. In other words, there is a "specific provision to the contrary" within the meaning of S. 1 (2), Criminal P. C., and affects S. 27, Evidence Act. Where an accused makes a statement to a Police Officer to the effect that the knife with which he and the other co-accused had killed the deceased was at his house under heap of pyal, the statement is inadmissible in evidence under S. 27, Evidence Act, by reason of S. 162 Criminal P. C. (AIR 1933 All 440 : 34 Cr LJ 875 Overruled) (Collister, Allsop and Braund, JJ.) Baldeo v. Emperor.

AIR 1940 All 263 : 1940 ALJ 241 : 1940 AWR 229 : 13 RA 48 : ILR (1940) All 396 : 188 IC 562 : 41 Cr LJ 627 (FB).

——Ss. 162, 1 (2)—(Per Young, C. J., Tek Chand and Din Mahommad JJ.; Dalip Singh and Bhide, JJ., contra.)

Section 162, Criminal P. C., is a "specific provision to the contrary" within the meaning of S. 1 (2) of the Code. (Young C. J., Tekchand, Dalip Singh, Monroe, Bhide, Din Mohammad and Ramlall, JJ.) Hakam Khuda Yar v. Emperor.

AIR 1940 Lah 129 : ILR (1940) Lah 242 : 13 RL 1 : 188 IC 498 : 41 Cr LJ 591 (FB).

——The statements made by accused persons while in the custody of the Police and apparently admissible under S. 27, Evidence Act, are not shut out by S. 162, Criminal P. C. (Burn and Stodart, JJ.) In re Kapa Morranna.

AIR 1939 Mad 840 : 1939 MWN 877 : 50 LW 423 : (1939) 2 MLJ 635 : 13 RM 16 : 188 IC 311 : 41 Cr LJ 573.

——The provisions of S. 27, Evidence Act, are quite independent of S. 162, Criminal P. C., and the amendment of that section in 1923, was not intended to abrogate or impair the effect of S. 27, Evidence Act. (Niyogi and Gruer, JJ.) Moti Lal v. Emperor.

AIR 1940 Nag 66 : 12 RN 150 : 1939 NLJ 585 : 185 IC 310 : 41 Cr LJ 158.

——Section 162, Criminal P. C., is clearly wide enough to include statements made to a Police Officer which would be admissible under S. 27, Evidence Act, as constituting information in consequence of which some fact has been discovered. But S. 162 does not shut out statements which are admissible under S. 27, Evidence Act, since S. 27, is a special law which is not derogated from by the general rule enacted in S. 162, Criminal

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P. C. (Burn and Stodart, JJ.) In re Subbiah Tevar.

AIR 1939 Mad 856 : 12 RM 469 : 50 LW 318 : 1939-2 MLJ 455 : 1939 MWN 1000 : ILR (1939) Mad 947 : 184 IC 593 : 41 Cr LJ 41.

—Admissibility of.

Statements made to a Police Officer in the circumstances provided for by S. 27 of the Evidence Act are admissible in evidence notwithstanding that they may have been made to an investigating officer during the progress of an investigation. (Varma and Rowland, JJ.) Emperor v. Mayadhar Pothal.

AIR 1939 Pat 577 : 20 PLT 420 : 5 BR 706 : 11 RP 653 : 18 Pat 450 : 181 IC 1001 : 40 Cr LJ 625.

——Obiter.—The words of S. 162, Criminal P. C., may pro tanto repeal the provisions of S. 27, Evidence Act, which would otherwise apply. If they do not, presumably it would be on the ground that S. 27, Evidence Act is a "special law" within the meaning of S. 1 (2), Criminal P. C., and that S. 162 is not a specific provision to the contrary. (Lords Atkin, Thankerton, Wright, Porter and Sir George Rankin) Narayana Swami v. Emperor.

AIR 1939 PC 47 : 1939 AWR 35 : 1939 MWN 185 : 11 RPC 166 : 1939 OWN 282 : 20 PLT 265 : 49 LW 349 : 43 CWN 473 : 1939 ALJ 298 : 41 Bom LR 428 : 41 PLR 272 : 69 CLJ 273 : (1939) 1 MLJ 756 : 18 Pat 234 : ILR (1939) Kar (PC) 123 Sup : 5 BR 449 : 6 Cut LT 25 : 66 IA 66 : 180 IC 1 : 40 Cr LJ 364 (PC).

——Section, if excludes any confession made to Police Officer in course of investigation, whether discovery is made or not.

The words of S. 162, Criminal P. C., are plainly wide enough to exclude any confession made to a Police Officer in course of investigation whether a discovery is made or not. (AIR 1927 Cal 17 : 28 Cr LJ 99 Overruled) (Lords Atkin, Thankerton, Wright, Porter and Sir George Rankin.) Narayana Swami v. Emperor.

AIR 1939 PC 47 : 1939 MWN 185 : 11 RPC 166 : 1939 OWN 282 : 20 PLT 265 : 49 LW 349 : 43 CWN 473 : 66 IA 66 : 1939 ALJ 298 : 41 Bom LR 428 : 41 PLR 272 : 69 CLJ 273 : (1939) 1 MLJ 756 : 18 Pat 234 : 1939 AWR 35 : ILR (1939) Kar (PC) 123 Sup : 6 Cut LT 25 : 180 IC 1 : 40 Cr LJ 364 (PC).

——No applicability to statements by accused — There is no conflict with Evidence Act (1872) S. 27.

In regard to statements made by accused persons the Criminal Procedure Code does not in S. 162, as amended by Act 18 of 1923, alter the provisions of S. 27, Evidence Act. There is no contradiction in the two sections as S. 162 does not apply to statements by accused persons. (Young and Bennet, JJ.) Emperor v. Faujdar.

AIR 1933 All 440 : 34 Cr LJ 875.

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(Overruled in AIR 1940 All 263 : 41 Cr LJ 627)

——Section 27, Evidence Act, is an exception to the general rule against the proof of statements made to the Police by the accused persons in the course of an investigation. (Reilly, Ananta Krishna Ayyar and Sundaram Chetty, JJ.) Syamo Maha Patro v. Emperor.

AIR 1932 Mad 391 : 1932 MWN 305 : Ind Rul (1932) Mad 338 : 55 Mad 903 : 35 LW 705 : 62 MLJ 742 : 137 IC 9 : 33 Cr LJ 418.

——Admissibility—Test purpose.

Per Rupchand, A. J. C.—The fact that an accused person has made a statement with the object of exculpating him or that his statement if believed would exculpate him does not by itself render it admissible in evidence. If notwithstanding the form in which it has been made the statement is nevertheless an admission of incriminating circumstances and is used by the prosecution as such, it is not admissible in evidence. A useful test as to the admissibility of a statement made by an accused person to the police is to ascertain the purpose for which it is being put to by the prosecution. Where the prosecution rely upon the statement as corroborative proof of certain facts deposed to by the prosecution witnesses and not with the object of proving their falsity, the statement is not admissible in evidence. AIR 1925 Sind 237; 6 Bom 34, 14 Bom 260 (F.B.); 19 Bom 362 and AIR 1926 Sind 151. Rel. on. (Wild, A. J. C. on difference between Percival, J. C. and Rupchand, A. J. C.) Mohumed Yusif v. Emperor.

AIR 1930 Sind 225 : 126 IC 449 : 1930 Cr C 865 : 31 Cr LJ 1026.

——The provisions of S. 27, Evidence Act, are quite independent of those of S. 162, Cr. P. Code, and the amended S. 132, does not repeal or in any way affect S. 27 : AIR 1926 Rang 116 (F.B.); AIR 1926 Lah 88; AIR 1925 Mad 574 and AIR 1928 Nag 108, Appr. AIR 1927 Cal 17; AIR 1926 Pat 232; AIR 1925 Rang 101 and AIR 1926 Rang 116 (F.B.), Ref.; AIR 1926 Nag 368, Diss. from. (Prideaux, Kinkhede and Kolhatkar, A. J. Cs.) Gola v. Emperor.

AIR 1929 Nag 17 : 24 NLR 158 : 114 IC 273 : 12 AI Cr R 177 : 30 Cr LJ 258 (FB).

——Section 27, Evidence Act, is not affected by S. 162 Cr. P. Code, but S. 162 is affected by S. 27, Evidence Act. The result is that a special exemption to S. 162, Cr. P. Code, exists in the circumstances mentioned in S. 27, Evidence Act. AIR 1926 Rang 116 (FB), Rel. on. (Ramesam, Waller and Jackson, JJ.) Chinna Thimappa v. Talukunta Thimmappa.

AIR 1928 Mad 1028 : 51 Mad 967 : 112 IC 682 : 28 MLW 314 : 1 M Cr C 201 : 55 MLJ 351 : 29 Cr LJ 1098.

——S. 27, Evidence Act is not repealed by S. 162, Cr. P. Code. AIR 1926 Rang. 116 (FB), Foll.

CRIMINAL P. C. (V of 1898), S. 162 — 7. S. 162 and Evidence Act, S. 27

(Findlay, J. C. and Macnair, AJC.) Sheokalak Prasad v. Emperor.

AIR 1928 Nag 108 : 108 IC 442 : 11 NLJ 7 : 9 AI Cr R 408 : 29 Cr LJ 400.

——S. 162 of the Cr. P. Code overrides the provisions of S. 27, Evidence Act. (Kotval, A. J. C.) Bhagia v. King Emperor.

AIR 1927 Nag 203 : 100 IC 820 : 7 AI Cr R 575 : 28 Cr LJ 340.

——S. 162 of the Cr. P. Code must be taken as overriding S. 27 of the Evidence Act. (Doyle, J.) Emperor v. Nga Kyaing.

AIR 1926 Rang 112 : 94 IC 706 : 27 Cr LJ 658.

——The amended S. 162 does not exclude from evidence the fact that the accused made a statement to the police that the weapon with which the crime had been committed was concealed in a prickly-pear bush. The section both before and after amendment is directed against the admission, at the instance of the prosecution of Police diaries and other records prepared or copied from the diaries of investigating officers. The provisions of the Evidence Act are quite independent of the sections in the Cr. P. Code and cannot be treated as impliedly repealed in consequence of the amendment of the Code of Criminal Procedure. (Spencer, O. C. J. and Reilly, J.) Semalai Goundan, In re.

AIR 1925 Mad 574 : 86 IC 664 : 21 MLW 199 : 26 Cr LJ 840.

——S. 162 of the Cr. P. Code in its present form, overrides S. 27 of the Evidence Act. In determining whether the guilt of the accused has been proved it is necessary to ignore entirely all evidence which is held to be inadmissible under S. 162, Cr. P. Code. Conviction on the ground that the stolen property was discovered in consequence of a statement made by the accused to a Police-officer is bad. (Baguley, J.) Bawa Rowther v. Emperor.

AIR 1925 Rang 101 : 84 IC 545 : 3 Bur LJ 245 : 26 Cr LJ 321.

——Ss. 21 and 27 Evidence Act, if affected.

S. 162, Cr. P. C., does not in any way affect the provisions of Ss. 21 and 27 of the Evidence Act. S. 162 refers only to statements made by witnesses and not to statements by accused persons as such. Confessional statements made by accused persons in police custody or to the police, which lead to discovery of relevant facts, cannot be excluded if they have been recorded by the police and can be proved by oral evidence. (Mr. Batten and Mr. Stanyon.) Ganpati v. Emperor.

6 NLR 180 : 8 Ind Cas 1181 : 12 Cr LJ 60.

8. S. 162 and Evidence Act, S. 8.

——Statement by witness to Police Officer though evidence of conduct is not admissible.

Although evidence of conduct is admissible, a statement made by a witness to the Police Officer is not admissible because of the prohibition in S. 162, Criminal P. C., even though such statement is sought to be admitted as evidence of conduct. (Horwill, J.) In re Verdhichand Sowcar.

AIR 1943 Mad 527 : 16 RM 243 : 1943 MWN 290 (2) : (1943) 1 MLJ 377 : 208 IC 265 : 44 Cr LJ 766.

——Report made to Police by accused after first information report— Accused not questioned by police.

Where, after the first information report of a murder has been made and recorded, the accused makes a report to the police by voluntarily going to the Police Station, by way of defence and possibly by way of reply to the report already made and no question is put to him by the Police and his report is not recorded as a report but only noted in the general diary, such a report is not a statement made in the course of investigation within the meaning of S. 162, Criminal P. C., and is not inadmissible under S. 8, Evidence Act. (Bennett and Ghulam Hasan, JJ.) Emperor v. Bhagi.

AIR 1941 Oudh 359 : 1941 OWN 722 : 1941 AWR 188 : 13 RO 578 : 194 IC 236 : 42 Cr LJ 539.

——Arrest in the course of investigation — Evidence of Police Officer of statement made by accused — Exclusion of.

Where the arrest of the accused is made in the course of the investigation into the offence, the evidence of the Inspector making the arrest as to certain statements having been made by the accused, should be excluded under S. 162, Criminal P. C. Such evidence is not admissible under S. 8, Evidence Act, as explanatory of conduct. (Curgenven and Cornish, JJ.) In re Krishna Iyer.

AIR 1935 Mad 479 : 1935 MWN 82 : 8 RM 137 : 157 IC 297 : 36 Cr LJ 1107.

——Where the accused were tried for offences under Ss. 399 and 402 of the Penal Code, and the Deputy Superintendent of Police gave evidence as to the explanations offered by the accused soon after their arrest as to the circumstances which brought them to the place where they were arrested, which differed from those given by the accused in the Sessions Court:

Held, Per Milne, J. C., that the evidence was admissible as showing that the conduct of the accused was not that of innocent persons.

Per Mehta, A. J. C.—"It is doubtful if, in order to discredit the version of an accused person at the trial, the use of his statement before the Police, although it may be substantially of a non-incriminatory character otherwise, is not provided against in S. 162, Criminal P. C." (Milne J. C. and Mehta, A. J. C.) Chotu v. Emperor.

AIR 1932 Sind 16 : 25 SLR 391 : Ind Rul (1932) Sind 43 : 136 IC 523 : 33 Cr LJ 302.

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9. Statement of approver.

——Statements of approver and other witnesses—Discrepancies in.

Where there are discrepancies between the statements of the approver and other witnesses, it is not open to the Judge to try to explain them by referring to the statement of the approver made before the Police as this procedure is opposed to the express provisions of S. 162, Criminal P. C. (Jailal, J.) Asa Singh v. Emperor.

AIR 1934 Lah 102 : 6 RL 470 : 34 PLR 969 : 147 IC 935 : 35 Cr LJ 517.

——Approver's statement before pardon.

Statement made by an approver to the police before he is tendered a pardon, is a previous statement of a witness and it can be used either to corroborate him or to contradict him under the ordinary provisions of the Evidence Act and therefore the accused is entitled to have a copy of such statement. (Harrison and Dalip Singh, JJ.) Hazara Singh v. Emperor.

AIR 1928 Lah 257 : 9 Lah 389 : 108 IC 167 : 9 AI Cr R 559 : 29 Cr LJ 348.

10. "In the course of an investigation".

——Misconduct— Disciplinary action — Advocate asking for and supplied with copy of statement of witness to police, under S. 162, even though the witness was not cited—Conduct of advocate does not amount to sharp practice justifying his suspension.

See Bar Councils Act (1926), S. 10.

AIR 1953 SC 368 : 1953 Cr LJ 1459.

——Sub-Inspector taking down witness's statement during course of investigation — Statement is recorded under S. 162 and not under S. 154, and therefore, is inadmissible in evidence.

See Criminal P. C. (1898), S. 154.

ILR (1952) 2 Raj 1031 : 1953 RLW 348.

——In the course of an investigation— Investigation when begins.

Per Thadani C. J. (Ram Labhaya J. Contra).—The words "in the course of an investigation" mean in the course of an investigation made after the Police Officer decides to act under S. 156; until he takes such a decision, his action under Ss. 154 and 155 including recording of questions and answers in elucidation of a First Information Report, cannot be regarded as anything done in the course of an investigation.

Note.—In this case the complainant after handing over the first information in writing made a detailed statement before the police officer who asked him only one question. (Deka J. on Difference between Thadani C. J. and Ram Labhaya, J.) Kachu Gogoi v. State.

AIR 1951 Assam 151 : ILR (1951) 3 Assam 439 : 52 Cr LJ 1457.

——Statement of witness at inquest—Use of by accused.

CRIMINAL P. C. (V of 1898), S. 162 — **10. "In the course of an investigation"**

See ibid, S. 174.

AIR 1950 Trav-C 20 : 51 Cr LJ 833.

——'In the course of investigation under this chapter'—Statement made to police during investigation under S. 174 falls within S. 162. (Sen J.) Abdul Majid v. King.

AIR 1950 Cal 165 : 51 Cr LJ 680.

——"In the course of"—Meaning explained.

A first information report about the commission of murder was recorded by a Sub-Inspector of Police at the instance of one G, the son of the deceased. The Sub-Inspector then started for the hospital where the deceased was removed but before reaching there he was informed that the deceased was dead. He then held an inquest over the dead body and sent the body for post mortem examination. Before the investigation was started, the Sub-Inspector was informed by the doctor in charge of the hospital that the accused person had been admitted as indoor patient; he then recorded the statement of the accused which was exculpatory and instituted another first information report on the basis of this statement:

Held, that as the statement of the accused had been recorded by the Sub-Inspector before the investigation was started on the prior first information report it was not hit by S. 162 and therefore the first information instituted on the basis of that report was admissible in evidence. AIR (23) 1936 Pat 11 Foll. (Ramaswami and Narayan JJ.) Suba Chaudhury v. The King.

AIR 1950 Pat 44 : 28 Pat 762 : 51 Cr LJ 331.

——Statements during investigation.

See Criminal P. C. (1898), S. 154.

ILR (1951) 1 Cal 539.

——Witnesses present at spot inspection—Inspection report containing answers given by witnesses to questions put to them — Statements are not within S. 162.

Certain witnesses who were present at the site inspection were asked to indicate where the beating was given and where the deceased fell and where they were at the time they saw the incident. The site inspection report contained a reference to all these facts and recorded them as if the witnesses were making statements.

Held, that the statements could not come under S. 162. (Nawal Kishore C. J. and Sukhdeonarain J.) Sarkar v. Dhooka.

1947 MLR 1 (Cr).

——Information of investigating officer.

By virtue of S. 162, the investigating officer's information cannot be used for any purpose during the proceedings before the Judge and answers of the Inspector to whom the investigating officer was subordinate are inadmissible and the questions in response to which the answers are given

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should be disallowed. (Edgley and Roxburgh, JJ.) Emperor v. Ajit Kumar Ghosh.

AIR 1945 Cal 159 : 18 RC 122 : 220 IC 237 : 78 Cal LJ 217 : 46 Cr LJ 692.

——"In the course of" meaning of.

The words "in the course of" in the context of S. 162 import that the statement must be made as a step in a pending investigation to be used in that investigation. The words "in the course of" do not refer merely to that period of time which elapses between the beginning and the end of the investigation.

Consequently, a report which is made quite independently of and in no relation to any pending investigation and not designed to promote a pending investigation in any way but to start one having no reference at all to the investigation which has in fact begun cannot be said to have been made "in the course of" the investigation of the case. (Collister and Braund, JJ.) Emperor v. Aftab Mohammad Khan.

AIR 1940 All 291 : 1940 AWR 85 : 1940 ALJ 206 : 13 RA 55 : 188 IC 649 : 41 Cr LJ 647.

——Even in a case declared to be undetectable by the Police a statement made by the witnesses to the Police after a year is inadmissible being a statement before the Police in the course of enquiry. (Curgenven and K. S. Menon, JJ.) Karuppan v. Emperor.

1935 MWN 820.

——Statements to Magisrate at time of inspecting scene of offence.

Statements made to the investigating officer in the course of the inquiry and statements made to the Magistrate at the time of inspecting the scene of the alleged offence are both inadmissible in evidence. (Pollock, A. J. C.) Mahomed Haneef v. Emperor.

AIR 1934 Nag 198 : 7 RN 75 : 151 IC 904 : 35 Cr LJ 1463.

11. Investigation when starts.

——"In the course of investigation."

It is only when the investigation has actually begun that statements made to police officers are inadmissible under S. 162. Investigation does not necessarily commence immediately the first information report has been recorded. It commences when the first step is taken by the police towards ascertainment of the offence and the culprits thereof. When exactly this happens is dependent upon the facts of each case.

Held on the facts of the case, that the investigation did not commence till the Sub-Inspector went to the hospital and examined the deceased. What he enquired from the informant at the time when the written report was handed over to him was merely supplemental to that report. 1951 Raj LW 105; AIR 1949 All 364, Foll; 1951 Raj LW 46, Ref. (Wanchoo C. J. and Modi J.) Sanwalia v. State.

1953 Raj LW 519.

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——Sub-Inspector receiving information of shooting incident—He, not having information of commission of cognizable offence then—He going to spot and recording statements of witnesses.

The question whether a statement was recorded during investigation or not is a question of fact.

On receiving information of a shooting incident from a constable, a Sub-Inspector of police entered the information in his diary and started enquiry in the matter. He had no information of commission of cognizable offence then. On coming to the spot of the occurrence, the Sub-Inspector took the statement of a witness. While this statement was being produced in evidence, an objection was raised that the statement was inadmissible in evidence under S. 162, Cr. P. C. as it was recorded during the course of an investigation:

Held that the statement was admissible in evidence as it could not be said that it was recorded in the course of investigation of an offence as the Sub-Inspector had no information of the commission of a cognizable offence when he went to the spot. (Burn and King, JJ.) In re Mylaswami Chetty.

AIR 1939 Mad 66 : 1938 MWN 905 : (1938) 2 M LJ 750 : 11 RM 653 : 180 IC 78 : 40 Cr LJ 308 (2).

12. First information report and investigation.

——Rape case — F. I. R. by girl — Evidentiary value.

See Evidence Act (1872), S. 157.

1953 Raj LW 255.

——Statement to Police Officer—Test to determine whether first information or statement made during course of investigation—Admissibility of statement.

See ibid, S. 154.

AIR 1952 Him Pra 81 : 1952 Cr LJ 1720.

——Immediately after crime accused going to police station and confessing—Statement also forming first information of offence—Statement can be used in favour of accused —Case diaries, use of.

See Evidence Act (1872), S. 25.

AIR 1952 Mad 586 : 1952 Cr LJ 1240.

——Written report of cognizable offence—Statement of person bringing report recorded by investigating officer—Statement when admissible in evidence.

See Criminal P. C. (1898), S. 154.

1951 Raj LW 46.

——Words "in the course of", meaning explained —First information by one person—Statement of accused recorded before investigation started and

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another first information instituted on basis of such statement which was exculpatory—Statement is not hit by S. 162—First information report on its basis is admissible. (Ramaswami and Narayan JJ.) Suba Chaudhury v. The King.

AIR 1950 Pat 44 : 28 Pat 762 : 51 Cr LJ 331.

——Murder case—Police investigation—Statement by wife of murdered person, to police.

Where upon the first information report of the chaukidar, the Sub-Inspector of Police had started the investigation of crime and had sent the dead body of the deceased after holding inquest for post-mortem examination, the statement made to the police by the wife of the deceased subsequently cannot be treated as first information. The statement being in the course of investigation is not admissible under S. 132: AIR 1948 All 289, Rel. on. (Agarwala and Bhargava JJ.) Dr. Jai Nand v. Rex.

AIR 1949 All 291 : ILR (1949) All 658 : 1949 A WRHC 13 : 1949 ALJ 60 : 50 Cr LJ 498.

——Police Sub-Inspector's evidence as to what a witness had stated to him under S. 161 is not admissible and cannot be brought on record.

See ibid, S. 161.

53 CWN (1 DR) 66.

——H receiving lathi blows—Choukidar C of another village making report to police—Police not recording it but immediately proceeding to village where H was attacked and recording H's statement—C's statement held first information report—H's statement held inadmissible under S. 162. (Mathur and Harish Chandra, JJ.) Moti Singh v. Emperor.

AIR 1948 All 289 : 1948 All WR (HC) 71 : 1948 All LJ 53 : 1948 OAHC 71 : ILR (1948) All 119 : 49 Cr LJ 367.

——Ss. 162, 154—Telephone message to Police about commission of cognizable offence—Station writer can record it and sign it himself as person giving information—Subsequent statements to Police.

A telephone message given to Police about the commission of a cognizable offence can be recorded by the station writer as a first information report, and the station writer can sign it himself as the person giving the information, for a first information report may be merely hearsay and need not necessarily be given by a person who has firsthand knowledge of the fact. Subsequent statements made to Police must be regarded as statements made to the Police in the course of the investigation of this cognizable offence and therefore, are inadmissible under S. 162, Cr. P. C.

Such entries, or parts of entries, in the Police diary as are admissible in evidence, that is to say, which do not include statements made to the Police during the course of an investigation, should ordinarily be proved by calling the station-writer who recorded them to state orally the particulars

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recorded in each entry and then to produce the general diary in corroboration of his oral evidence. They differ in no respect from any other record in writing of a statement or event. (Roberts, C. J. and Dunkley, J.) Shwe Pru v. The King.

AIR 1941 Rang 209 : 14 R Rang 118 : 1941 Rang LR 346 : 197 IC 350 : 43 Cr LJ 157.

——Ss. 162, 154—First information report recorded—Accused subsequently voluntarily making report to Police by way of defence or reply.

Where after the first information report has been recorded, the accused voluntarily comes to the Police Station and makes a report to the Police by way of defence or reply and no question is put to him by the Police, the report of the accused is not a statement made in the course of the investigation and is therefore, not inadmissible. (Agarwal, J.) Qamrul Hasan v. Emperor.

AIR 1942 Oudh 60 : 1941 OWN 1166 : 1941 AWR 322 : 14 RO 280 : 197 IC 121 : 43 Cr LJ 115.

——It is a question of fact whether a statement made to a Police Officer in course of investigation comes under S. 162 or is made by way of complaint to commence investigation under S. 154, Cr. P. C. (Agarwal J.) Qamrul Hasan v. Emperor.

AIR 1942 Oudh 60 : 1941 OWN 1166 : 1941 AWR 322 : 14 RO 280 : 197 IC 121 : 43 Cr LJ 115.

——Investigation—When starts.

An investigation starts when the first step towards investigation is taken by the Police. (Collister and Braund, JJ.) Emperor v. Aftab Mohammad Khan.

AIR 1940 All 291 : 13 RA 55 : 1940 ALJ 206 : 1940 AWR 85 : 188 IC 649 : 41 Cr LJ 647.

——Accused committing two murders and causing grievous hurt to third—Separate informations lodged to Police—Reference in first information, to assault, if admissible in trial of murder.

Where, in a case, an accused has committed two murders and caused grievous hurt to a third person and separate information reports in respect of these offences are lodged with the Police, the references in the first information to the assault upon the person to whom grivous hurt was caused are, clearly, inadmissible in a trial for the murder of two other persons and should not be allowed to go to the jury. (Bartley and Khundkar, JJ.) Emperor v. Afsaruddi Naseraddi.

AIR 1939 Cal 32 : 67 CLJ 580 : 42 CWN 1235 : 11 RC 632 : 179 IC 910 : 40 Cr LJ 290.

——Ss. 162, 154—Information orally given not reduced to writing by Police Officer—Investigation commenced—S. 162, if applies to statements made by persons examined by him.

When an information is given orally under S. 154, Cr. P. C. and a Police Officer does not reduce it into writing, he is doing what he ought not to do and has acted in an irregular way. But it is going too far to say that while investigating

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the truth or otherwise of the information, he is not carrying on an investigation within the meaning of Chap. XIV of the Code. He obviously is, and if he is, S. 162 applies to the statements made by persons examined by him. The improper refusal or omission of a Police Officer to take down an oral statement in writing really throws no light whatever on the question whether totally different persons concocted a case or not. (Cunliffe and Henderson, JJ.) Sahedali Mirdha v. Emperor.

AIR 1937 Cal 309 : 10 RC 258 : ILR (1937) 2 Cal 308 : 171 IC 269 : 38 Cr LJ 1067.

——Murder Case—Investigation, starting point of.

Where a case of murder rises up in the mind of a Police Officer from very shadowy beginnings, the investigation must be held to start from the moment when he formed the opinion that there are grounds for investigating a crime. Statement made to the Police Officer before the investigation began or after the investigation has ended does not fall within S. 162. (Roberts, C. J. and Baguley J.) Sit Ro Saw v. Emperor.

AIR 1936 Rang 455 : 9 R Rang 204 : 165 IC 319 : 37 Cr LJ 1137.

——Ss. 162, 156 (1)—Girl taken away from her husband's place at M—Girl seen with accused in suspicious circumstances at D—Constable's report—Statement of girl to Sub-Inspector.

Where a girl was taken away from her husband's place at M and four months later she was seen with one of the accused at D in circumstances that aroused the suspicion of a constable, who took both of them to the thana and made a report after receiving which the Sub-Inspector recorded the statement of the girl:

Held, that the statement was not admissible in evidence in proceedings under S. 366, I. P. C. against the accused. (Kendall, J.) Kharaiti v. Emperor

AIR 1933 All 665 : 1933 ALJ 923 : 6 RA 275 : 55 All 979 : 146 IC 199 : 34 Cr LJ 1215.

——In a suitable case, information under S. 154, may be recorded even in the course of an investigation by a Police Officer but in such cases, it is from that information investigation begins into cognizable offence which was divulged by the information. If prior to that, a statement was made to the Police and recorded in the station diary, it is not affected by S. 132 and can be admitted in evidence because the offence is not under investigation until the first information is obtained. (Lort-Williams and S. K. Ghose, JJ.) Mani Mohan Ghose v. Emperor.

AIR 1931 Cal 745 : 58 Cal 1312 : 35 CWN 623 : Ind Rul (1932) Cal 97 : 135 IC 289 : 33 Cr LJ 138.

——Chaukidar's report—Subsequent statement to police by inmate of the house—First information which is—Value of statement.

See ibid S. 154.

AIR 1930 All 746 : 32 Cr LJ 152.

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——A statement made to the police after the police have commenced an investigation should not be treated as a first information and should be inadmissible except for the purposes mentioned in S. 162. I PLT 491 and AIR 1922 Pat 535, Cons.; AIR 1923 Pat 550, Foll (Adami and Wort, JJ.) Habib Khan v. Emperor.

AIR 1928 Pat 634 : 110 IC 584 : 29 Cr LJ 723.

13. "Investigation under this chapter."

——"Statement to investigating officer"—Application by police Sub-Inspector to Additional District Magistrate stating that accused had agreed to take bribe, that offence under S. 161, I. P. C., had been committed and asking for permission under S. 155 (2) to investigate case and stating that accused would accept bribe on that very day—Applicant also requesting that 1st class Magistrate may be deputed to witness and report the incident of bribe and make over report and documents to applicant for investigation—Application allowed and 1st Class Magistrate deputed—1st Class Magistrate witnessing incident and making report—Report handed over to Sub Inspector—Held, (1) that permission to investigate did not relate to offence of accepting illegal gratification for which accused was charged and convicted but related to offence under S. 161, I.P.C. which was already committed, namely that of agreeing to accept bribe; (2) that when report was handed over, the police sub-inspector was not investigating officer, investigating offence for which accused was tried and convicted; (3) that the report was not statement to investigating officer within meaning of S. 162. Investigating officer in course of investigation asking for statement of 1st Class Magistrate—Magistrate handing over copy of report addressed to Additional District Magistrate—Copy held statement within meaning of S. 162—Magistrate held could not make use of it to refresh his memory. (Per Division Bench: Original report could be so used). (Raghubar Dayal, Wanchoo and Seth JJ.) Shyamlal Sharma v. King-Emperor.

AIR 1949 All 483 : ILR (1951) 1 All 12 : 1949 ALJ 350 : 50 Cr LJ 719 (FB).

——Scope.

If an investigation is in all other respects an investigation under Chapter XIV, it would not cease to be an investigation under that Chapter within the meaning of S. 162, Cr. P. C., if it has been undertaken without necessary permission or on the strength of an invalid permission; and the statements, recorded during the course of such investigation would be as much hit by the provisions of S. 162, Cr. P. C., as the statements, recorded during the course of an investigation under Chapter XIV properly undertaken. (Raghubar Dayal, Wanchoo and Seth JJ.) Shyamlal Sharma v. The King Emperor.

AIR 1949 All 483 : ILR (1951) 1 All 12 : 1949 ALJ 350 : 50 Cr LJ 719 (FB).

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——"In the course of investigation"—Investigation when begins—Complainant handing over list of stolen property, after first information, as soon as Sub-Inspector of police arrives on spot—List is admissible in evidence and is not covered by S. 162.

An investigation by the police commences with the first step taken by the police towards the ascertainment of the offence and the culprits thereof. The mere fact that an investigating officer starts from the police station to the scene of occurrence after the lodging of the first information, is not commencement of the investigation. The first information lodged with the police may not be a complete document. If during the interval between the first information and taking of some step in the nature of investigation something which may legitimately be considered to be information, supplemental to the first information, is lodged with the police, it need not necessarily be considered to be a statement made during the course of investigation: AIR 1925 Cal 959; AIR 1929 Cal 448; AIR 1932 Lah 488; AIR 1947 PC 75 and AIR 1948 All 289, Disting. AIR 1931 Oudh 83, Commented; AIR 1931 Oudh 74 and AIR 1933 Lah 987, Rel. on. (Wanchoo and Agarwala, JJ.) Bhondu v. Rex.

AIR 1949 All 364 : ILR (1949) All 697 : 1949 ALJ 174 : 1949 AWRHC 265 : 50 Cr LJ 561.

——Order obtained in anticipation of the commission of offence—Validity of.

An order for investigation obtained in anticipation of the commission of offence is valid order and in such cases once the crime is committed, anything done by way of investigation is done as an investigation under Chap. XIV of the Code. (Roxburgh and Ellis, JJ.) S. and R. of Legal Affairs v. Zahiruddin.

AIR 1946 Cal 483 : 223 IC 408 : 47 Cr LJ 564.

——Where the accused are represented throughout by competent lawyers who are fully capable of appreciating all the points that have been made and on whose advice the accused are relying, the statements of the accused made before the departmental enquiry and the other documents referred to are admissible and the Crown is entitled to make use of their contents against each accused. (Agarwala and Brough, JJ.) Satyanarayana v. Emperor.

AIR 1944 Pat 67 : 22 Pat 681 : 10 BR 494 : 16 RP 313 : 25 PLT 57 : 212 IC 298 : 45 Cr LJ 624.

——Statements, if must be given to accused for cross-examining prosecution witnesses.

It is doubtful whether the provisions of S. 162, Cr. P. C., would apply in a case where persons are proceeded against under Chap. VIII, there being no cognizable case which has been preceded by an investigation by the Police in which the statements of witnesses had been recorded. But if

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there are previous statements of the witnesses for the prosecution in these proceedings recorded by the Police, whether before the proceedings were initiated or during the progress of the proceedings, the accused are entitled under the provisions of S. 145, Evidence Act, to cross-examine the prosecution witnesses thereon and, therefore, to be given copies thereof, and the refusal by the Magistrate to afford the accused copies of those statements and to cross-examine the prosecution witnesses thereon must be held to be an irregularity which has prejudiced the accused. (Lobo and Weston. JJ.) Emperor v. Rasul Bax.

AIR 1942 Sind 122 : ILR (1942) Kar 252 : 15 RS 136 : 205 IC 309 : 44 Cr LJ 367.

——Section has no bearing in case of departmental inquiry.

Section 162, Cr. P. C., has no bearing where there is no investigation under Chap. XIV of the Code but only a departmental inquiry. (Thomas, C. J.) Jagdish Narain v. Emperor.

AIR 1942 Oudh 163 : 1941 OWN 1255 : 14 RO 298 : 1941 AWR 358 : 197 IC 277 : 43 Cr LJ 139.

——Oral statements.

Oral statements, no less than written statements, made to a Police Officer during the course of investigation by him of a case, come within S. 162. Cr. P. C., and are not admissible in evidence even if the Police Officer was not acting under Chap. XIV Cr. P. C., and he was not investigating under S. 153 or S. 157 of the Code. (Pandrang Row, J.) In re Koganti Appayya.

AIR 1938 Mad 893 : 1938 MWN 825 : 48 Mad LW 322 : 11 RM 478 : 178 IC 616 : 40 Cr LJ 108.

——Ss. 162, 172—Departmental inquiry.

A statement made to the Police is as good evidence as a statement made to any other person save for certain exceptions to be found in the Evidence Act and in the Cr. P. C. In S. 162, Cr. P. C. it is laid down that a statement made to the Police in the course of an investigation of an offence cannot be used as evidence at any trial in respect of that offence, with the proviso, that, such a statement may be used by the accused to contradict a prosecution witness. But when the statement has not been made in the course of investigation, the offence in respect of which the trial was held, neither the main part of S. 162 nor the proviso has any application. Hence, where the departmental inquiry is not held under Chap. XIV, Cr. P. C., neither that section nor S. 172 can apply and the accused is entitled to see statements in such inquiry. (Mehta, O'Sullivan and Lobo A. J. Cs.) Mahomed Rahim v. Emperor.

AIR 1935 Sind 13 : 7 RS 167 : 29 SLR 92 : 154 IC 762 : 36 Cr LJ 581 (FB).

——Bombay District Police Act (IV of 1890), S. 51 (1) (b)—Applicability of S. 162—Right to obtain copies—Evidence Act (I of 1872), S. 124—Applicability of—Procedure at trial.

CRIMINAL P. C. (V of 1898), S. 162 — 13. "Investigation under this chapter"

Certain persons were proceeded against under S. 107, Cr. P. C., on a complaint filed by a Police Officer who was deputed to inquire into a complaint that interference with peace was probable. He held an investigation in the course of which he recorded statements of several persons. An application was made, during trial, to get copies of the statements of the witnesses to the Police Officer during investigation. On refusal by the Magistrate, they came in appeal:

Held, (i) that inasmuch as under S. 51 (1) (b), Bombay District Police Act, the Police Officer was empowered to make the investigation, the investigation made by him could not be deemed to have been an investigation under Chap. XIV, Cr. P. C., and consequently, S. 162 of the Code did not apply to the statements;

(ii) that the communication made by the witnesses to Police Officer did not fall under S. 124, Evidence Act, and he could be asked to depose to the report, or the Police Officer himself could, when examined, be asked to refer to the report.

The investigation under S. 162, Cr. P. C., refers to an investigation with regard to the commission of either a non-cognizable offence in which order is given by Magistrate to a Police Officer to enquire, or a cognizable offence in which a Police Officer is entitled to make an investigation without the order of a Magistrate. (Patkar and Barlee JJ.) In re Barjorji Framji Bharucha.

AIR 1932 Bom 196 : 34 Bom LR 258 : Ind Rul (1932) Bom 521 : 139 IC 628 : 33 Cr LJ 797.

——Statements during enquiry under S. 197.

Where, in a case where sanction of the Local Government was necessary under S. 197 a confidential enquiry was made by an officer of the Criminal Investigation Department before such sanction was granted or before any enquiry was directed by the Magistrate and statements of witnesses were recorded at such enquiry by such officer and also before a Magistrate.

Held, the statements recorded by the Criminal Investigation Department Officer were not statements under S. 162 nor were the statements recorded by the Magistrate statements under S. 134: 19 Bom 51 Rel. on. (Crump and Madgavkar, JJ.) Emperor v. Jehangir Ardeshir.

AIR 1927 Bom 501 : 8 AI Cr R 324 : 29 Bom LR 996 : 106 IC 100 : 28 Cr LJ 1012.

14. Investigation by excise officer, etc.

——Excise officer whether police officer within S. 162.

See Evidence Act (1872), S. 25.

AIR 1953 Mad 917 : 1953 Cr LJ 1693.

——Statement made to Customs Officials.

Customs Officials are not Police Officers and statements made to them are not covered by S. 162. (Tyabji C. J.) Ayoob Hashim v. Crown.

AIR 1950 Sind 14 : LR (1948) Kar 135 : Pak Cas 1950 Sind 15 : 51 Cr LJ 901.

CRIMINAL P. C. (V of 1898), S. 162 — 14. Investigation by excise officer, etc.

——Statement to Police Officer in the course of investigation—Statements recorded by Asst. Commercial Tax Officer—Admissibility.

The Madras Food Grains Control Order, 1945, does not contain any provision clothing any officer of the Commercial Tax Department with the powers of an officer in charge of a police station to investigate an offence. Therefore, the statements recorded by an Asst. Commercial Tax Officer cannot be excluded under S. 162: AIR 1946 Mad 430 Disting. (Yahya Ali J.) Venugopal v. Emperor.

AIR 1948 Mad 39 : 1947-2 MLJ 164 : 60 MLW 491 : 1947 MWN 484 : 48 Cr LJ 983.

——Police Officer—Special Officer empowered by Madras Government under S. 12 (3) of Hoarding and Profiteering Prevention Ordinance is Police Officer within S. 162, Cr. P. C. and S. 25, Evidence Act.

A special officer of the Commercial Tax Department who has been empowered in this behalf by the Provincial Government of Madras in exercise of the powers conferred on them by S. 12 (3), Hoarding and Profiteering Prevention Ordinance, introduced by the amending Ordinance No. 53 (LIII) of 1944, is a Police Officer within the meaning and for the purpose of S. 162, Cr. P. C. and S. 25, Evidence Act. (Leach C. J. and Lakshmana Rao J.) In re Someshwar H. Shelat.

AIR 1946 Mad 430 : 1946-1 MLJ 368 : 59 Mad LW 252 : 1946 Mad WN 271 : 226 IC 269 : 47 Cr LJ 865.

——Statements made to Excise Sub-Inspector.

A statement made to an Excise Sub-Inspector in the course of investigation is admissible under S. 162, Cr. P. C. Where such an officer, in the course of investigation, obtains the signatures of certain persons to certain statements made by them and reduced into writing in contravention of S. 162, Cr. P. C., it is not a mere irregularity but an illegality which is not curable under S. 537, Cr. P. C. (Hemeon, J.) Bhickarilal Kishanlal v. Emperor.

AIR 1945 Nag 217 : 1945 Nag LJ 303 : 18 RN 64 : 220 IC 226 : 46 Cr LJ 710.

——Statement made to Customs Officer.

The Excise Act (Bengal Act V of 1909) does not give the Customs Officer any powers of investigation as conferred upon Police Officers under Cr. P. C. Consequently, a statement made to a Customs Officer does not come within the mischief of S. 162, Cr. P. C., and is therefore, admissible in evidence. (Henderson and Sen, JJ.) Ghulam Dastgir v. Emperor.

AIR 1939 Cal 623 : 12 RC 244 : 184 IC 581 : 41 Cr LJ 40.

——Statement to Excise Officers.

Section applies also to the Excise Officers investigating excise cases. Statements made to them in the course of investigations would be inad-

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missible under S. 162. (Lort-Williams and Jack, JJ.) Jogendra Nath Gorai v. Emperor.

AIR 1935 Cal 621 : 8 RC 181 : 40 CWN 29 : 63 C 419 : 158 IC 385 : 36 Cr LJ 1366.

——There is no authority for assuming that an Excise Officer is to be regarded as a Police Officer for the purposes of S. 162. (Patterson and Guha JJ.) Keratali v. Emperor.

AIR 1934 Cal 616 : 61 C 967 : 7 RC 49 : 35 CWN 1085 : 150 IC 980 (2) : 35 Cr LJ 1178.

——Section 162 does not apply to the statements recorded by Excise Inspector during enquiry. (Lakshmana Rao, J.) Michael v. Emperor.

1933 MWN 1270.

——The accused was charged under S. 46, Excise Act. A statement was made by his co-accused to the Excise Inspector to the effect that as soon as the Excise Inspector came, there was a man with him who ran away.

Held, that it was not a statement made to the police officer in course of investigation under Ss. 160 and 170, Cr. P. Code, and was not inadmissible in evidence. Nor was the statement reduced to writing so as to be inadmissible under S. 162, Cr. P. Code. Even if the statement was taken as confession under S. 25, Evidence Act, S. 162, Cr. P. Code did not apply in cases of accused persons. AIR 1927 Cal 17, Rel. on. (Suhrawardy and Costello, JJ.) Tura Sadar v. Emperor.

AIR 1930 Cal 710 : 52 CLJ 177 : 1930 Cr C 1110 : 129 IC 101 : 32 Cr LJ 231.

——Statement to village Magistrate about dacoity, whether one under S. 154 or S. 132.

See Penel Code S. 211.

9 Cr LJ 170 (Mad).

15. "If reduced into writing."

——Failure to record statement of each witness separately—Effect.

An investigation officer is not bound to record the statements of a witness. If he does reduce statements into writing he must make a separate record of the statement of each of the persons whose statements he records. He cannot record a condensed version of the examination of all of them or a precis of what the witnesses are supposed to have said.

Non-compliance with the provisions of S. 161 (3), however, does not make the evidence of the witnesses inadmissible though it is a matter which the Court is entitled to consider when dealing with credibility. (Teja Singh, C. J. and Gurnam Singh J.) State v. Hardial Singh.

AIR 1953 Pepsu 66 : 3 Pepsu LR 90 : 1953 Cr LJ 884.

——Record of mere gist of statements of witnesses —Effect on admissibility of evidence of such witnesses.

See ibid S. 161 (3).

AIR 1950 Cal 363 : 51 Cr LJ 1307.

CRIMINAL P. C. (V of 1898), S. 162—15. "If reduced into writing"

——Statements of prosecution witnesses not available to defence—Evidence to be disregarded—Statements of some only of prosecution witnesses available—Evidence of to be received with caution.

Where in a trial witnesses are called for the prosecution whose statements to the police have been reduced into writing but are not produced for the defence or if produced are of no value because what is recorded is merely the digest of what the police officer making investigation learnt from such witnesses, the Court should disregard the evidence of such witnesses:

Where out of a number of prosecution witnesses, statements of some of the witnesses made to the police are available, the Court should not ignore the evidence of such witnesses because the statements of other witnesses are not available. At the same time, the evidence of such witnesses should be received with caution because of the possibility that if copies of the separate statements of the other witnesses to the police had been available they might have damaged the prosecution case irreparably. (Hemeon and Padhye JJ.) Shyama Rajaram Pardhan v. Emperor.

AIR 1949 Nag 260 : ILR (1949) Nag 379 : 1949 NLJ 315 : 50 Cr LJ 669.

——'Statements reduced into writing."

Notes of statements of witnesses incorporated in a general narrative in a note-book are statements reduced into writing within meaning of S. 162. (Per Chakravartti J.) (Roxburgh and Chakravartti JJ.) Laxman Chandra v. Emperor.

AIR 1948 Cal 278 : ILR (1948) 2 Cal 364 : 1948 AWR Sup 81 : 1948 OA Sup 81 : 52 CWN 401 : 49 Cr LJ 469.

——Police diaries—Proper mode of recording statements.

It is very undesirable that police-officer should record statements in diaries in the from "A supported B" or "A corroborated B" without a clear indication of the statement of A which the recording officer considers as supporting or corroborating the statement of B. (Sinha and Beevor, JJ.) Emperor v. Ram Sewan.

AIR 1945 Pat 109 : 23 Pat 656 : 25 PLT 163 : 218 IC 465 : 46 Cr LJ 513.

——Index to map prepared by Investigating Officer.

Per Khundkar and Das JJ.—Information derived from witnesses during Police investigation and recorded in the index to map must be proved by the evidence of the witnesses concerned and not that of the Investigating Officer. If brought in by the Investigating Officer's evidence, it is hit by S. 162, Criminal P. C., and where it relates to a vital matter and the trial is by jury the defect cannot be cured by the application of S. 167, Evidence Act and the trial must be held to be vitiated.

CRIMINAL P. C. (V of 1898), S. 162 — 15. "If reduced into writing"

Per Lodge J.—Even if the statement in the index be inadmissible where it appears that it could not affect the verdict of the jury, the trial cannot be held to have been vitiated. (Khundkar, J. on Difference between Lodge and Das, JJ.) Ibra Akanda v. Emperor.

AIR 1944 Cal 339 : 17 RC 53 : 48 CWN 366 : ILR (1944) 2 Cal 405 : 215 IC 67 : 45 Cr LJ 771.

——Omission in notes of statements — Whether proves that witness did not say what he said in trial—Contradicting of witness by record of statement made during investigation—Necessity of proof of record—Omission to prove record—Whether precludes Court from seeing statement.

A statement to an Investigating Officer has been "reduced into writing" even when the officer has not recorded the statement in full, but has merely noted the gist of what was stated to him. The value of such a note for the purpose of contradicting testimony given on oath at a subsequent trial varies with the nature of the testimony and of the officer's note. Where, therefore, the only record of a witness's statement to the Investigating Officer is a brief note, it follows that omissions from that note are of practically no value for the purpose of proving that the witness did not state to the officer matters to which he deposes at the trial.

The record of the statement made during the investigation must be proved before it can be used to contradict a witness and the attention of the witness must be drawn to the particular points in which his evidence differs from the record of his statement made by the Police.

The omission to prove the record of the statement made in the course of an investigation does not preclude the Court from seeing the statement, inasmuch as S. 172 (2) provides for it. Whether the record of a statement be proved and used under S. 162, or used under S. 172 (2) without being proved, it is necessary for the Court to be astute to avoid using it otherwise than as provided by law. (Agarwala and Rowland, JJ.) Emperor v. Najibuddin.

AIR 1933 Pat 589 : 14 PLT 543 : 6 RP 339 : 147 IC 142 : 35 Cr LJ 379.

——Whole statement to be recorded.

Police officers who are charged with the duty of investigating crimes should not be in a position to take the statements of witnesses, extract as much as they think is relevant or important for entry in their diaries and then destroy the original statement. The practice is illegal in so far as it deprives the accused of an important right and it may result in the destruction of valuable evidence in favour of an accused. (Darwood, J.) Sulaiman Mahomed v. Emperor.

AIR 1929 Rang 87 : 6 Rang 672 : 115 IC 899 : 12 AI Cr R 327 : 30 Cr LJ 538.

——Memorandum of statement is enough.

CRIMINAL P. C. (V of 1898), S. 162—15. "If reduced into writing"

It is immaterial whether the statement recorded is the actual record of the words used by the witness. It is sufficient even if the statement is recorded in the form of a memorandum of what the witness had said to the police officer. It is not necessary, in order that an accused person may be allowed under S. 162 to contradict the witness that the statement must contain the very words used by the witness. (Cuming and Graham, JJ.) Mofizaddi v. Emperor.

AIR 1927 Cal 644 : 45 CLJ 561 : 31 CWN 940 : 104 IC 245 : 28 Cr LJ 805.

——Statement made to Police-officer during an investigation need not be reduced to writing and oral evidence regarding the same is admissible. (Kennedy, J. C. and Aston, A. J. C.) Pithumal v. Emperor.

AIR 1921 Sind 16 : 88 IC 449 : 13 SLR 342 : 26 Cr LJ 1137.

16. Statement not to be signed.

——Ss. 162, 174.

Practice of getting inquest report embodying the statements of witnesses and accused, signed by them deplored as unwholesome and unwarranted —Practice of police of getting signatures of witnesses on statements made by them during investigation whether they be in the form of matiazars, Yadasths or recovery list equally deplored. (Koshi, C. J. and Gangadhara Menon, J.) Kuruvila Joseph v. State.

AIR 1952 Trav Co 300 : 1952 Ker LT 216 : ILR (1952) TC 261 : 52 Cr LJ 1290.

——Grant of copies of statements.

The police or the prosecution cannot render S. 162 nugatory by disobeying its provisions and making the witnesses sign their statements. The Court is not justified in refusing copies of statements of witnesses merely because they are signed by the witnesses. (Sen J.) Abdul Majid v. King.

AIR 1950 Cal 165 : 51 Cr LJ 680.

——S. 162 (1).

The effect of a contravention of S. 162 (1) depends on the prohibition which has been contravened. If the contravention consists in the signing of a statement made to the police and reduced into writing the evidence of the witness who signed it does not become inadmissible. There are no words either in the section or elsewhere in the statute which express or imply such a consequence. Still less can it be said that the statute has the effect of vitiating the whole proceedings when evidence is given by a witness who has signed such a statement. But the value of his evidence may be seriously impaired as a consequence of the contravention of this statutory safeguard against improper practices. The use by a witness while he is giving evidence of a statement made by him to the police raises different considerations. The categorical prohibition of such use would be merely disregarded if reliance were to be placed

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on the evidence of a witness who had made material use of the statement when he was giving evidence at the trial. When, therefore, the Magistrate or presiding Judge discovers that a witness has made material use of such a statement it is his duty under the section to disregard the evidence of that witness as inadmissible. And where the Magistrate has so disregarded the evidence and acquitted, S. 537 cannot apply to the case. (Lord Wright, Lord Du Parcq, Lord Normand, Sir Madhavan Nair and Sir John Beaumcnt.) Zahiruddin v. Emperor.

AIR 1947 PC 75 : 1947 MWN 222 : 1947 OAPC 21 : 51 CWN 555 : 1947 AWRPC 21 : 1947 ALJ 379 : 49 Bom LR 521 : 74 IA 80 : 231 IC 86 : 13 BR 542 : 60 MLW 524 : ILR (1948) 1 Cal 179 : 48 Cr LJ 679 (PC).

——Admissibility for prosecution.

Statements coming under S. 162 would be quite inadmissible as evidence for the prosecution and the fact that they have been wrongly signed would not greatly increase the illegality of the use of such statements in evidence. (Wadsworth and Shahabuddin, JJ.) In re Swaminathan.

AIR 1945 Mad 284 : (1945) 1 MLJ 449 : 58 Mad LW 262 : 1945 MWN 361 (2) : 1946 Mad Rul 54 : 221 IC 299 : ILR (1946) Mad 219 : 47 Cr LJ 149.

——Statement signed.

A statement of a witness to which his thumbmark was taken by the Police Sub-Inspector during investigation of the case, is inadmissible. (Radha Krishna J.) Waris Khan v. Emperor.

AIR 1943 Oudh 209 : 15 Luck 429 : 1940 OWN 177 : 1940 AWR 92 : 13 RO 513 : 193 IC 770 : 42 Cr LJ 483.

——Signed statements.

Where, in the course of his investigation, the Circle Inspector causes certain witnesses to sign the statements made by them before him, the evidence of such witnesses is inadmissible. (Ziaul Hasan, J.) Emperor v. Samiullah.

178 IC 254 : 11 RO 102 : 1938 AWR 83 : 1938 OWN 1048 : 14 Luck 302 : 40 Cr LJ 19.

——Signed statement.

Where a statement to the Police Officer has been reduced to writing and is signed by the maker, there is, no doubt, an irregularity. It must be taken into account with other elements, if such there be, of objection to the satisfactory character of a trial. It would not by itself be sufficient ground for quashing a conviction. To some extent, this irregularity must be allowed to impair the value of the evidence given by the witnesses affected by it. (Ferrers, J. C. and Mehta, A. J. C.) Mahomed Panah v. Emperor.

AIR 1934 Sind 78 (2) : 7 RS 33 : 150 IC 917 : 35 Cr LJ 1170.

——S. 162 (1)—Evidence of person who has been made to sign.

CRIMINAL P. C. (V of 1898), S. 162 — 16. Statement not to be signed

Non-compliance with the provision contained in S. 162 (1), Criminal P. C., that no statements made by a person to a Police Officer during investigation shall be signed by the person making it is not a mere irregularity but an illegality and even if it is an irregularity, it is not one which can be cured by S. 537, Criminal, P. C. The evidence given at the trial by a person who has been made to sign a statement made to the Police should, therefore, be rejected. The policy underlying the said provision is that witnesses at the trial should be free to make any statements in favour of the accused which they should wish to make, unhampered by anything which they might have said or might have been made to say to Police. The result of the witnesses' signatures having been obtained on their statements, reduced into writing, would be to tie them down to the statements so recorded, or at any rate to give them the impression that they were not free to make a different statement. (Bisheshwar Nath Srivastava, J.) Bhuneshwari Pershad v. Emperor.

AIR 1931 Oudh 172 : 8 OWN 503 : Ind Rul (1931) Oudh 250 : 6 Luck 668 : 132 IC 234 : 32 Cr LJ 860.

17. Limited use of previous statements.

(a) General.
(b) "Witness is called for the prosecution."
(c) Accused alone can use statement.
(d) Statement to be used only for contradicting a witness.
(e) Statement cannot be used for corroborating a witness.
(f) Omissions and discrepancies in the statement.
(g) Joint statements.

17. Limited use of previous statements.—

(a) General.

——Ss. 162 and 288 — Previous statement of witness —Admissibility —Extent of —(Evidence Act (1872), S. 145).

A cursory reading of S. 162, Criminal P. C. or S. 145, Evidence Act, would show that previous statements are inadmissible in evidence except to the extent mentioned therein. If any of the previous statements have to be utilised as a whole they can only be under S. 288, Criminal P. C. (Qamar Hasan and Jaganmohan Reddy, JJ.) State of Hyderabad v. Annantha Reddy.

AIR 1953 Hyd 133 : ILR (1952) Hyd 512 : 1953 Cr LJ 746.

——Statements of witnesses to police — Admissibility — Duty of Court.

Statements of witness to police made during the course of investigation are clearly inadmissible under S. 162. Recording courts must be careful to see that no inadmissible evidence is allowed to be adduced or recorded because it raises an inference or gives rise to the suggestion that the trial judge was influenced by such inadmissible evidence.

CRIMINAL P. C. (V of 1898), S. 162 — 17. Limited use of previous statements—(a) General

(Qamar Hasan and Jaganmohan Reddy, JJ.) State of Hyderabad v. Annantha Reddy.

AIR 1953 Hyd 133 : ILR (1952) Hyd 512 : 1953 Cr LJ 746.

——Defence cannot put question even in cross-examination to police what accused told during investigation—It is however duty of Court, which has seen the police diary, to put such question to police, under its wide powers under S. 165, Evidence Act, if it thinks that the answer would benefit the accused in his defence—Evidence Act (1872), S. 165. (Mack and Basheer Ahmed Sayeed, JJ.) Molagan, In re.

AIR 1953 Mad 179 : 1952-2 MLJ 186 : 1952 Mad WN 608 : 1952 Mad WN Cr 180 : ILR (1953) Mad 284 : 1953 Cr LJ 424.

——Statement to police—Denial in witness box—Admissibility.

If a person makes a statement to the police and afterwards denies the statement in the witness-box. it is inadmissible either in favour of the accused or against him: AIR 1949 PC 103, Foll. (Bannerji J. C.) Gopal v. Crown.

AIR 1950 Him Pra 18 : 51 Cr LJ 786.

——Statement to police—Denial of statement in witness-box.

The prosecution produced three statements alleged to have been made to the police officers in charge of the case by three persons. All three of the persons concerned, when called as witnesses, denied having made or understood the statements attributed to them and further denied the matters therein alleged and both in the Magistrate's Court and in the High Court said they were untrue. Held these three statements were, therefore, inadmissible whether in favour or against either of the prisoners. (Lord Porter, Oaksey, Morton of Henryton and Macdermott.) (Case from Fiji) Walli Mohammad v. The King.

AIR 1949 PC 103 : 53 CWN 318 : 1949 ALJ 154 : 1949 AWRPC 237 : 1949 All Cri Cas 36 (2) : 1949 MWN 320 : 50 Cr LJ 340 (PC).

——Statement before Police—Death.

The Court is not entitled to read the statement, made to the Police as evidence, even though the deponent be dead at the time of the trial. (Ram Lall, J.) Sunder Lal v. Emperor.

40 PLR 421.

——Statement, how to be used.

The statements made to the Police can only be put to the witnesses under S. 162, Criminal P. C. The section provides that in all cases, not falling under S. 32, cl. (1), Evidence Act, no statement, whether oral or written, made by any person to a Police Officer in the course of an investigation, may be used for any purpose at an inquiry or trial in respect of any offence under investigation at the time when such statement was made. That is the general provision contained in para. 1 of S. 162. The first proviso makes an exception which is

CRIMINAL P. C. (V of 1898), S. 162 — 17. Limited use of previous statements—(a) General

strictly limited in its application. To bring the provisions of the proviso into operation, three conditions must be fulfilled: first, the statement of the witness in question must have been reduced into writing; secondly, the witnesses must have been called for the prosecution; and thirdly, the written statement must be proved. When those conditions exist, the proviso directs that "the Court shall, on the request of the accused, refer to such writing, and direct that the accused be furnished with a copy thereof," and then it can be used to contradict the witness. In actual practice, when the first two conditions are fulfilled, the written record of the witness's statement is generally put to him on an undertaking of the prosecution to call the investigating officer to prove the statement, because it is inconvenient to prove each statement separately. So that, the general practice is to call the investigating officer at a later stage of the trial and he proves the written statements which have been put to the witnesses. (Beaumont C. J. and Wassoodew, J.) Emperor v. Mahomed Adam Chohan.

AIR 1937 Bom 60 : 38 Bom LR 1186 : 9 RB 274 : 167 IC 43 : 38 Cr LJ 327.

——Statement of Police Officer explaining his conduct during investigation.

Where in a murder trial, the defence suggested that the deceased was murdered by his own brother and the Sub-Inspector of Police who investigated the case deposed that he had received no information to that effect during the investigation and this fact was further corroborated by a defence witness:

Held, that S. 162, Criminal P. C., did not prevent the Police Officer from explaining his conduct by making such a statement. (Addison and Coldstream, JJ.) Mohan Lal v. Emperor.

AIR 1931 Lah 177 : Ind Rul (1931) Lah 404 : 131 IC 276 (2) : 32 Cr LJ 682.

——Remarks of Police officer.

The police officer in charge of an investigation is not debarred from making explanatory remarks in reference to his own conduct even though it may inferentially have reference to the statements made by witnesses; and their admissibility in evidence is not to be questioned. (Rankin, C. J. and C. C. Ghose, J.) Tota Meah v. Emperor.

AIR 1929 Cal 298 : 119 IC 139 : 56 Cal 1106 : 30 Cr LJ 1015.

——Statements made before the investigating Police Officers cannot be used in any way except for the limited purpose of contradicting the testimony of the prosecution witnesses produced at the trial. (Fforde and Jai Lal, JJ.) Hayat v. Emperor.

AIR 1928 Lah 380 : 107 IC 766 : 10 LLJ 389 : 29 Cr LJ 282.

——One of the witnesses who was examined in the committing Magistrate's Court died before trial in the Sessions Court. He was not cross-examined

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immediately after his examination-in-chief. The Sessions Judge refused to allow the Sub-Inspector of Police to be cross examined on the statements said to have been made to him by the witness and recorded by him under the provisions of S. 161.

Held, at the time when the deposition of the witness was taken before the Committing Magistrate there can be no question that the accused had the right and opportunity of cross-examining him in terms of S. 33 of the Evidence Act, and as the accused did not exercise his right and did not avail of the opportunity of cross-examining this witness immediately after his examination-in-chief before the committing Magistrate had been finished his deposition could not be excluded.

Held, further, that the terms of S. 162, if applicable at all could only have been applicable during the stage of the enquiry before the committing Magistrate and could not in any view of the matter be held to be applicable when the case was in the Sessions Court and therefore the Sessions Judge did not err at all in refusing the prayer of the accused to be allowed to cross-examine the Sub-Inspector. (Rankin, C. J. and C. C. Ghose, J.) Azimuddy v. Emperor.

AIR 1927 Cal 398 : 31 CWN 410 : 101 IC 661 : 8 AI Cr R 134 : 28 Cr LJ 485.

——The provisions of S. 162 as amended absolutely bar the use of statements, both oral and written, and make those statements inadmissible for any purpose under the Evidence Act in any enquiry or trial except for one purpose, and that is by the accused to contradict a prosecution witness in the manner provided by S. 145, Evidence Act. AIR 1925 Mad 579, Diss. from. (Rutledge, C. J. Heald, Duckworth, Chari and Maung Ba, JJ.) Emperor v. Nga Tha Din.

AIR 1926 Rang 116 : 4 Rang 72 : 5 Bur LJ 30 : 96 IC 145 : 27 Cr LJ 881 (FB).

17. Limited use of previous statements—

(b) "Witness is called for the prosecution."

——Prosecution cannot cross-examine its own witness on his police statement, however hostile he may be, even to contradict him. (Baxi J. C.) Abdulla Taiyab v. Kutch Government.

AIR 1950 Kutch 87.

——Court, if can suo motu look into police diary and can question witnesses to contradict evidence.

No doubt S. 162 prevents the Court from using statements made by a person to a police officer in the course of investigation for any other purpose than that mentioned in the proviso but it does not, in any other way, affect the power that lies in the Court to look into documents or put questions to witnesses suo motu, under S. 135, Evidence Act so as to bring out the discrepancies in the evidence. There is nothing in S. 162, Cr. P. C., which prevents a Judge from looking into the Police diaries suo motu and himself using the statement of a person examined by the Police recorded therein for the purpose of contradicting such person when he gives evidence in favour of the Crown as a prosecution witness. The Judge may do this or he may make over the recorded statement to the lawyer for the accused so that he may use it for purposes of contradicting witness in a case. Where the evidence given in Court implicates persons who are not mentioned in the first information report, it is always advisable for the Judge to look into the Police papers in order to ascertain whether the persons implicated by witnesses at the trial had been implicated by them during the investigation. Even when the investigating officer has been examined and discharged, the Court has power to recall him and the witnesses suo motu and make use of the Police diary to bring out the discrepancies in the evidence and can put questions to the witnesses for that purpose. (Khundkar and Sen, JJ.) Emperor v. Lal Mia.

CRIMINAL P. C. (V of 1898), S. 162 — 17. Limited use of previous statements—(b) "Witness is called for the prosecution"

AIR 1943 Cal 521 : 47 CWN 336 : 16 RC 339 : ILR (1943) 1 Cal 543 : 209 IC 206 : 45 Cr LJ 99.

——Section 162, Cr. P. C., applies to prosecution witnesses only. Where a witness is called by the defence his previous statement cannot be used either by the prosecution or by the defence for the purpose of contradicting or corroborating him. If the witnesses produced by one accused are examined by the Police, the co-accused is deprived of the privilege of contradicting them by their former statements. He may also be deprived of the benefit of S. 342, for it is not obligatory on the Court to give an opportunity of making a statement about the evidence. (Broomfield and Divatia, JJ.) Shapurji Sorabji v. Emperor.

AIR 1936 Bom 154 : 38 Bom LR 106 : 60 B 148 : 8 RB 415 : 162 IC 399 : 37 Cr LJ 683.

——Whether can be used by Court to discredit accused on account of any contradiction.

It is not proper that the Sessions Judge should cross-examine the accused with a view to confronting them with the statements which they made to the Investigating Officer. Statements made even by witnesses to a Police Officer in the course of an investigation are not permitted to be used in evidence for any purpose, except as provided in S. 162, Criminal P. C., that is to say, on the request of the accused, the Court shall refer to the written statement and direct that the accused be furnished with a copy of it in order that the witness may be contradicted by the use of this statement. It was certainly never intended that an accused person when being examined by the Court for the purpose of explaining anything in evidence against him should be confronted with the statement which he had made to the Police for the purpose of being discredited on account of any contradiction. (Kendall, Ag. C. J. and Harries, J.) Bhagwan Das v. Emperor.

AIR 1935 All 717 : 7 RA 944 : 1935 ALJ 385 : 1935 AWR 210 : 155 IC 560 : 36 Cr LJ 773.

CRIMINAL P. C. (V of 1898), S. 162 — 17. Limited use of previous statements — (b) "Witness is called for the prosecution"

——Oral statements.

The meaning of S. 162, Criminal P. C., is clear at least in this respect that no oral statement made by a witness to the Police in the course of an investigation under Chap. XIV, and no record of such statement shall be used for any purpose at any inquiry or trial in respect of the offence under investigation except as provided in that section. The prosecution, therefore, is not entitled to ask a prosecution witness what statement he made to the Police or whether he made a certain statement to the Police. There is nothing in S. 132, to prevent the question being put whether the witness made any statement to the Police or whether he was questioned by the Police. (Pollock, A J. C.) Mohan Banjari v. Emperor.

AIR 1933 Nag 384 : 6 RN 159 : 30 NLR 55 : 147 IC 1122 : 35 Cr LJ 577.

——Statements made by witnesses to the Police and recorded in police diary, during an investigation, should never be admitted in evidence. The power of Court under S. 165, Evidence Act, should not be used for the purpose of eliciting what the law expressly and deliberately forbids being admitted; nor such evidence if elicited, is admissible for any purpose whatever. (Waller and Krishnan Pandalai, JJ.) Jangavabojina Pullamma v. Emperor.

1932 MWN 625.

——Use — Contradiction — Defence witness.

No oral statement made by any person to a police officer in the course of an investigation under this chapter and no record of any such oral statement can be used for any purpose in a Court of law in respect of an offence under investigation at the time when such statement was made, except for the purpose of contradicting a prosecution witness. It can only be used for that purpose under special conditions. Such a statement cannot be used for the purpose of contradicting a defence witness. (Stuart, C. J. and Raza, J.) Ganga v. Emperor.

AIR 1930 Oudh 60 : 1930 Cr C 156 : 4 Luck 726 : 124 IC 444 : 6 OWN 1056 : 31 Cr LJ 689.

——The proviso to S. 162 applies to statements made by persons who are called as witnesses for the prosecution only and not if they are summoned by the Court at the suggestion of the defence. (Tekchand, J.) Gurdella Shah v. Emperor.

AIR 1927 Lah 713 : 104 IC 444 : 28 Cr LJ 828.

——What can be contradicted.

S. 158 of Evidence Act, places a person whose statement has been used as evidence under S. 32 in the same category as a witness actually produced in Court for the purpose of contradicting his statement by a previous statement made by him. Therefore a statement which has been admitted in evidence under S. 32 may be contradicted by another statement of the same person made

CRIMINAL P. C. (V of 1898), S. 162 — 17. Limited use of previous statements — (b) "Witness is called for the prosecution"

to police during investigation. (Harrison and Jai Lal, JJ.) Hari Ram v. Emperor.

AIR 1926 Lah 122 : 89 IC 897 : 26 Cr LJ 1425.

——Their depositions before conviction based upon comparison between statements of prosecution witnesses before police and their deposition before Magistrate — Illegality.

It is illegal for a Magistrate, trying an accused person, to use as evidence against the accused statements made by the prosecution witnesses before the police and by comparing them with their depositions, and convict him on the basis of that comparison. (Chandavarkar and Heaton, JJ.) Emperor v. Laxman Subhana.

9 Bom LR 895 : 6 Cr LJ 224.

17. Limited use of previous statements—

(c) Accused alone can use statement.

——Prosecution witnesses deposing as to statements made to police officer—Admissibility of.

Statement made by any person to the police officer in the course of an investigation of a case cannot be admitted in evidence except for the limited purpose mentioned in S. 162, and that too at the instance of an accused person. Thus, the evidence about what was stated to the police officers by the witnesses which is given by the prosecution should not be admitted under any circumstances. (Teja Singh J.) Chetu Sansari v. Emperor.

AIR 1948 Lah 69 : 228 IC 334 : 49 PLR 16 : 48 Cr LJ 200.

——Statements of witnesses recorded by investigating officer being destroyed not available to accused for cross-examination — Their evidence is inadmissible — Statement by witness made to police, on record — Statement can be used by accused for cross-examination.

Cross-examination is as essential as examination-in-chief for eliciting from a witness material which is to constitute evidence.

If on a certain point the statements recorded by the police under S. 162, Cr. P. C., in the course of investigation were the only material for cross-examination and that was not available to the accused in consequence of their destruction or otherwise, it must be said that the accused had no opportunity to examine the witnesses on the particular point and the evidence bearing on the point would, therefore, be inadmissible.

But if there is on the record any statement by any witness to the police, particularly, if it purports to be based on personal knowledge, that statement can well be used by the accused for cross-examination and if he omits to avail himself of it he cannot be heard to say that he was denied the opportunity to cross-examine the witness. (Niyogi and Hemeon, JJ.) Maganlal Radhakishan v. Emperor.

AIR 1946 Nag 173 : ILR (1946) Nag 126 : 1946 Nag LJ 139 : 226 IC 245 : 47 Cr LJ 851.

CRIMINAL P. C. (V of 1898), S. 162 — 17. Limited use of previous statements—(c) Accused alone can use statement

——Memorandum of facts occurring at scene of occurrence prepared by witness and handed over to investigating officer— Memorandum cannot be used by witness to refresh memory.

A memorandum of facts occurring at the place of commission of the offence prepared subsequently by a witness and handed over to the investigating officer will be a statement made to police officer during the course of investigation and therefore such memorandum cannot be used by the witness to refresh his memory while giving evidence at the trial. (Roxburgh and Ellis, JJ.) S and R of Legal Affairs v. Zahiruddin.

AIR 1946 Cal 483 : 223 IC 408 : 47 Cr LJ 564.

——Statement under, not to be put in to help prosecution — Statement does not become evidence against accused by mere fact of inspection by accused.

Statement to the police made in the course of their investigation must never be put in to help the prosecution as if they were admissible (which they are not) under S. 157, Evidence Act. It is a mistake to think that a document which the accused or his advocate has a right to inspect becomes evidence against the former from the mere fact of the inspection. (Roberts C. J. and Dunkley, J.) Tha Nge Gyi v. The King.

1946 Rang LR 229.

——Ss. 162, 161—Statement falling under Ss. 161 and 162—Admissibility of.

The language of Ss. 161 and 162, Criminal P. C., is mandatory and the statement falling within those sections cannot be admitted in evidence although it can or parts of it can be used for the purposes which are indicated in S. 162, Criminal P. C. (Derbyshire, C. J. and Gentle, J.) Sital Chandra v. Emperor.

AIR 1942 Cal 495 : 15 RC 308 : 46 CWN 775 : 202 IC 153 : 43 Cr LJ 797.

——Sufficiency for conviction of accused.

A statement made before the Police by a prosecution witness can be utilised solely by the accused for the purposes of cross-examination and for discrediting the testimony of that prosecution witness. Such a statement made before the Police Officer is not evidence upon which the conviction of an accused person can be founded. (Bisheshwar Nath and Nanavutty, JJ.) Ausan Singh v. Emperor.

AIR 1932 Oudh 247 : Ind Rul (1932) Oudh 291 : 9 OWN 437 : 138 IC 159 : 33 Cr LJ 566.

——There is nothing in the Code to justify the use of statements made under S. 161 by the prosecution for its own purposes and especially for the purpose of corroborating the statements made by prosecution witnesses in Court. (Courtney Terrell, C. J. and Fazl Ali, J.) Jhari Gopa v. Emperor.

AIR 1929 Pat 268 : 118 IC 130 : 8 Pat 279 : 10 PLT 460 : 1929 Cr C 21 : 30 Cr LJ 858.

CRIMINAL P. C. (V of 1898), S. 162 — 17. Limited use of previous statements—(c) Accused alone can use statement

——The provisions of S. 165 cannot be used in contravention of S. 162 of the Cr. P. Code. (Otter, J.) Maung Htin Gyaw v. Maung Po Sein.

AIR 1927 Rang 74 : 99 IC 1019 : 4 Rang 471 : 7 AI Cr R 373 : 28 Cr LJ 219.

——Neither statement by accused nor first information report is covered by S. 162.

Statements by accused are not within S. 162. AIR 1926 Rang 113 (FB); AIR 1926 Lah 88 and AIR 1926 Pat 232, Foll. The first information report against the accused is clearly not a statement within the contemplation of S. 162 because it is not made in the course of an investigation. Such report has to be tended under one or other of the provisions of the Evidence Act. The usual course is for the prosecution to call the informant and for the first information to be tendered as corroboration under S. 157; but it could also be tendered in a proper case under S. 32 (1) as a declaration as to the cause of the informant's death, or as part of the informant's conduct (of the res gestate) under S. 8. Theoretically, the defence could prove the information to impeach the informant's credit under S. 155 or to contradict him under S. 145. Statements made by third parties to the police in the course of their investigation can be used as corroboration under S. 157, or in contradiction under S. 145 or to impeach credit under S. 155 provided the person who made the statement is called as a witness. This would apply to the prosecution and to the defence indifferently under the Evidence Act. But S. 162 of the Cr. P. Code, enacts first that if such a statement is not recorded in writing it cannot be used in evidence in any circumstance or for either side or for any purpose. AIR 1926 Rang 116 (FB); AIR 1925 Lah 399 and AIR 1924 Bom 510, Foll. If such a statement has been recorded in writing then it cannot be used for any purpose but one and that by the defence. Provided that the person who made it is called as a witness for the prosecution the defence may apply for a copy of the statement and if it be proved may use it under S. 145 of the Evidence Act to contradict that witness. Broadly speaking, a statement made by an accused to police officer may be proved against him under the Evidence Act if it is not a confession; and even if it is part of a confession it is admissible under S. 27 if a fact is deposed to as discovered in consequence of the information. S. 162 of the Cr. P. Code does not disturb this position. (Rankin and Duval, JJ.) Azimoddy v. Emperor.

AIR 1927 Cal 17 : 54 Cal 237 : 44 CLJ 253 : 99 IC 227 : 28 Cr LJ 99.

(Overruled in AIR 1939 PC 47 : 40 Cr LJ 364)

——Under S. 162 as amended, statements made by any persons to a police officer in the course of an investigation under Chap. 14 shall not be used for any purpose except to contradict a wit-

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ness at the request of the accused in the manner provided in the second paragraph of the section. (Newbould and B. B. Ghose, JJ.) Gahur Howldar v. Emperor.

AIR 1926 Cal 793 : 30 CWN 503 : 94 IC 593 : 27 Cr LJ 641.

——Improper use.

To believe the evidence of a witness because a perusal of the police diaries satisfied the Court that he was examined at the earliest opportunity and had made the same statement before the police is an improper use of the police diaries. (Shadi Lal, C. J.) Fazal v. Emperor.

AIR 1926 Lah 363 : 94 IC 358 : 27 Cr LJ 614.

——Statements made by the witnesses to the police during the investigation are not admissible for purpose of corroborating their depositions before the committing Magistrate. (Shadi Lal, C. J. and Zafar Ali, J.) Rakha v. Crown.

AIR 1925 Lah 399 : 93 IC 230 : 6 Lah 171 : 26 PLR 304 : 27 Cr LJ 438.

——Statements made by witnesses to the police officer during the course of investigation under Chapter 14 cannot be used by the Court for contradicting those witnesses. (N. R. Chatterjea and B. B. Ghose, JJ.) Kermat Mandal v. Emperor.

AIR 1926 Cal 147 : 42 CLJ 528 : 92 IC 453 : 27 Cr LJ 277.

——It is improper of the Court to use Police diaries against the accused. (Scott Smith, J.) Aziz v. Emperor.

AIR 1925 Lah 295 : 84 IC 436 : 26 Cr LJ 292.

——Statements embodied in police diaries can be used in favour of an accused person, but not against him. (Zafar Ali, J.) Rajindar Singh v. The Crown.

AIR 1923 Lah 516 : 77 IC 489 : 25 Cr LJ 409.

——By consent.

Consent or desire of accused cannot legalize the procedure of using police diaries as evidence in the case either for or against the accused. (Wazir Hasan, A. J. C.) Manna Lal v. King Emperor.

AIR 1925 Oudh 1 : 75 IC 753 : 27 OC 40 : 25 Cr LJ 49.

——Statement recorded by Police—Value of.

A statement of prosecution witness recorded by the Police can only be used in the manner prescribed by S. 162 and cannot be used to impeach his credit when he is called for the defence. It is unsafe to accept such a statement as accurate. (Saunders, J. C.) Nga Yon v. Emperor.

AIR 1919 Upp Bur 38 : (1918) 3 UBR 84 : 46 IC 406 : 19 Cr LJ 726.

——What an investigating police officer could not be allowed to depose in examination in chief.

In his examination in chief the Investigating Police Officer should not be allowed to depose as to what the witnesses said to him because that would create an undesirably wide field for cross-

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examination and divert and distract the attention of the Court from the true issues. Moreover, it is contrary to the plain intention of S. 162 of the Code of Criminal Procedure, which is, that such statements should be used, if at all, on behalf of, and not against, the person under trial. (Chandavarkar and Heaton, JJ.) Emperor v. Akbar Badu.

12 Bom LR 663 : 7 Ind Cas 933 : 34 B 599 : 11 Cr LJ 542.

——Use of statement made to police officer.

Per Knox J. (Karamat Hussain, J. differing)—

The special provisions of the section controls the general provisions contained in S. 157, Evidence Act. A police officer using the writing, in which the statement made to him during an investigation is recorded, whether it be for the purposes of refreshing his memory under S. 157 Evidence Act while deposing as to what was stated, or for other purposes, is using that writing in evidence against the accused and the Court accepting the testimony also does the same, contrary to the provisions of S. 162 of the Code. (Knox and Karamat Hussain, JJ.) Rustam v. King Emperor.

6 Ind Cas 101 : 7 ALJ 468 : 11 Cr LJ 235.

——Having regard to S. 162, Cr. P. C. (corresponding to S. 63, Bombay City Police Act IV of 1902) a statement taken down in writing of a witness for prosecution and recorded by a police officer cannot be admitted or used in evidence against the accused.

See City of Bombay Police Act IV of 1902, S. 63.

6 Cr LJ 164 (Bom).

17. Limited use of previous statements—

(d) Statement to be used only for contradicting a witness.

——Use of statement under.

A statement made by a witness to a police investigating officer can be used only in one manner in view of S. 162, Criminal P. C., and that is only to contradict the statement of the witness if he be examined as a prosecution witness. If the same person be not examined as a prosecution witness but examined as a defence witness, then that statement cannot be used. Any other use of the statement is forbidden. (Raghubar Dayal and Hari Shankar, JJ.) Sheo Shankar v. State.

AIR 1953 All 652 : 1953 All WR (HC) 264 : 1953 All LJ 720 : 1953 Cr LJ 1400.

——S. 162 (1)—Statement made to police by witness reduced into writing and signed—Such statement used by witness when giving evidence in Court—Evidence held was incompetent.

See Criminal P. C. (5 of 1898) S. 537.

AIR 1947 PC 75 : 48 Cr LJ 679.

——Under S. 162, the defence is entitled to contradict a witness called for the prosecution by reference to his statements before the police; but

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the prosecution is not. Section 162 lays down in the most positive manner that, apart from this privilege extended to the accused, the statement to the police shall not be used for any purpose at the trial. (Meredith and Bennett, JJ.) Dwarka Singh v. Emperor.

AIR 1947 Pat 107 : 12 BR 631 : 225 IC 552 : 47 Cr LJ 780.

——Previous statement to Police by witness.

The "purpose" mentioned in S. 132, Criminal P. C., is the purpose of contradicting the evidence given in favour of the Crown by a prosecution witness in Court by the use of the previous statement made by such witness to the Police Officer. The purpose is to discredit the evidence given in favour of the prosecution by a witness for the Crown. The section prohibits the use of the statement for any other purpose than this. (Khundkar and Sen, JJ.) Emperor v. Lal Mia.

AIR 1943 Cal 521 : 16 RC 339 : 47 CWN 336 : ILR (1943) 1 Cal 543 : 209 IC 206 : 45 Cr LJ 99.

——Ss. 162, 172, 174—If substantive evidence.

A statement under S. 162, Criminal P. C., by a witness to the Police is not substantive evidence at all and can be used only to contradict statement made during the trial. (Horwill, J.) In re Packirisami Pillai.

AIR 1942 Mad 288 (2) : 14 RM 669 : 55 LW 771 : 1942 MWN 591 : 199 IC 833 : 43 Cr LJ 582.

——Whether can be used as substantive evidence.

A statement before the Police can only be used for the purpose of contradiction and can never be treated as substantive evidence in the case. The discrepancies introduced may prove a witness to be unreliable, but the previous statement made to the Police cannot be used against the accused. (Bhide and Din Mohammad, JJ.) Das Ram v. Emperor.

AIR 1941 Lah 471 : 43 PLR 600 : 14 RL 282 : 197 IC 801 : 43 Cr LJ 268.

——Ss. 162, 297—Mode of proving statement—Duty to bring case diary on record—Mere asking questions to Police Officer, legality—Use of statement by defence—Reference to such statement in charge to Jury—Misdirection.

If statements made to the Police during investigation by prosecution witnesses are brought on record at the instance of the defence, the latter must take the consequences of getting them on record and cannot complain of misdirection if the Judge in his charge to the Jury refers to them provided he cautions the Jury that they are not to take the statements made to the Police as substantive evidence.

The prosecution cannot invoke the aid of S. 162, Criminal P. C. But under S. 162, the defence can use the statements made to the Police during the stage of investigation for the purpose of contradicting the witnesses who come and give evidence in the Sessions Court and for the

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purpose of showing that the witnesses have made divergent statements at different times. If, however, the defence wants to show in an affirmative manner that the witnesses for the prosecution cannot be relied upon, it is the duty of the defence to prove through the investigating Police Officer when he is in the witness-box the record of the statements made to the Police by the witnesses for the prosecution during the stage of investigation, after getting on record a true copy of the case diary, and ordinarily, it will not be permissible instead of such course being followed to allow the investigating officer to be asked various questions not with reference to what was recorded by him during the stage of investigation but with reference to what is supposed to have been stated to him by the prosecution witnesses during such investigation. (Claus Rankin C. J. and Charu Chunder Ghose, J.) Jasim-ud-Din v. Emperor.

AIR 1931 Cal 622 : 35 CWN 164 : Ind Rul (1931) Cal 875 : 134 IC 763 : 32 Cr LJ 1245.

——Explanation not excluded.

S. 162 does not prevent a police officer from explaining his conduct in sending up a particular set of accused persons for trial by making a report that he had received no information to such and such effect. AIR 1929 Cal 298, Foll. (Fforde and Addison, JJ.) Basant Singh v. Emperor.

AIR 1930 Lah 484 : 122 IC 568 : 31 PLR 185 : 1930 Cr C 596 : 31 Cr LJ 442.

——Standing by themselves, the police proceedings are not substantive evidence in the case and cannot be used in order to test the correctness of the statements made by witness on oath before the Court. (Shadi Lal, C. J. and Agha Haider, J.) Emperor v. Ram Rang.

AIR 1928 Lah 820 : 109 IC 221 : 10 AI Cr C 230 : 29 Cr LJ 493.

——Inconsistency.

Statements to the police are not evidence in themselves and the true question before the jury in case of inconsistency is whether the inconsistency in the statements did not make the evidence in Court unreliable. (Ross and Wort, JJ.) Tajali Mian v. Emperor.

AIR 1928 Pat 31 : 104 IC 459 : 7 Pat 50 : 9 PLT 57 : 28 Cr LJ 843.

——Police documents prepared in investigation — Not admissible even after formal proof.

Documents prepared by police during the course of investigation are not evidence and they do not become so after they have been formally proved by witnesses. A document which is not evidence does not become so by being formally proved and exhibited in the case. (Agha Haidar, J.) Varu v. Emperor.

AIR 1927 Lah 79 : 99 IC 240 : 7 AI Cr R 287 : 28 Cr LJ 112.

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——According to the recently amended provisions of the Cr. P. Code, statements of witnesses recorded by the investigating officer can only be used to assist the accused in particular by showing that a witness who in court deposes to certain facts has in such a statement at an earlier stage given an account or made statements which are contradictory to the testimony which he gives in Court. They cannot be used in cross-examining the witnesses not merely to show contradictions but at large for the purpose of showing that the statements did not corroborate or assist the story as put forward in the first information report. (Bucknill and Macpherson, JJ.) Badri Choudhuri v. Emperor.

AIR 1926 Pat 20 : 92 IC 874 : 6 PLT 620 : 27 Cr LJ 362.

——Strict compliance.

A statement made by any person to a Police Officer in the course of a criminal investigation can only be used at the trial in strict accordance with the provisions of S. 132. (Shadi Lal, C. J. and Fforde, J.) Mohamad v. Emperor.

AIR 1926 Lah 54 : 89 IC 252 : 26 Cr LJ 1308.

——A Police statement can only be used for one purpose and that is by the accused to contradict a prosecution witness in the manner provided by S. 145 of the Evidence Act. (Shah, Ag. C. J. and Fawcett, J.) King Emperor v. Vithubalu.

AIR 1924 Bom 510 : 83 IC 1007 : 26 Bom LR 965 : 26 Cr LJ 223.

——It is no evidence.

A statement to the police by a witness is inadmissible in evidence for any purpose against the accused. But it is admissible in evidence to contradict the sworn testimony of the witness. When the person who made the previous statement is examined in Court, that statement can be used as provided for in the Indian Evidence Act to contradict and sometimes to corroborate the witness; but is not substantive evidence by itself, and a conviction cannot be based upon it. (Ryves, J.) Shiam Sunder v. Emperor.

AIR 1923 All 469 : 76 IC 572 : 25 Cr LJ 204.

——Statements made to Police — Corroborative evidence—Evidence Act, Ss. 155 and 157.

Statements made to the Police could not be used to corroborate the evidence of a witness except in very special circumstances. The evidence of a witness who is hostile to the prosecution may be impeached by reference to the Police diaries. There is nothing in S. 162, Cr. P. Code to prevent this course being adopted. (Roe and Imam, JJ.) Ram Charitra Singh v. Emperor.

AIR 1918 Pat 459 : (1918) Pat 95 : 4 Pat LW 325 : 5 Pat LJ 568 : 45 IC 272 : 19 Cr LJ 512.

——"Mashirnama" — Admission in evidence to corroborate witness.

See Evidence Act, 1872, S. 157.

11 Cr LJ 498 (Sind).

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17. Limited use of previous statements—

(e) Statement cannot be used for corroborating a witness.

——Limited use of police statement — Evidence Act (1872), S. 157.

The police statement of a witness who has been called by the prosecution cannot be used for the purpose of corrborating the statements of that witness under S. 157 of the Evidence Act. (Harnam Singh and Kapur, JJ.) Nikka Singh v. State.

AIR 1952 Punj 186 : ILR (1951) Punj 231 : 1952 Cr LJ 775.

——Statement to police cannot be used for corroborating prosecution witnesses.

Statements made to police during investigation cannot be used by the prosecution for the purposes of corroborating the prosecution witnesses. (Harnam Singh and Falshaw JJ.) Hazura Singh v. The Crown.

AIR 1950 East Punjab 23 : 51PLR 327 : 1950 All WR (Sup) 1 : 1950 All Cri Cas 18 : 51 Cr LJ 412.

——S. 162 (1) Proviso — Scope.

Under proviso to sub-s. (1) to S. 162, a previous statement by a prosecution witness falling under the section can be used by the accused only for the purpose of contradicting such witness under S. 145 of the Evidence Act and not for any other purpose, such as corroborating a prosecution witness or contradicting a defence-witness. (Khosla and Harnam Singh JJ.) Jit Singh v. The Crown.

AIR 1949 EP 334 : 51 PLR 65 : 50 Cr LJ 840.

——If can be used to corroborate police evidence.

It is not permissible to use statement made to the Police during investigation to show that it was not a new story in the mouth of the witnesses. Under S. 162, Criminal P. C., such statements can only be used for the purpose of contradicting the prosecution witnesses. There is nothing in the Code to justify the use of these statements by the prosecution for its own purposes and specially for the purpose of corroborating the statements made by witnesses in Court. The provisions of the section are to be strictly observed. (Harries, C. J. and Rowland, J.) Emperor v. Girdhari Teli.

AIR 1940 Pat 605 : 6 BR 693 : 13 RP 9 : 188 IC 429 : 41 Cr LJ 587.

——Ss. 162, 537 — Whether can be used to corroborate witness — Superior Court, interference by.

The Magistrate is not entitled to use the Police notes of what the witness said to the Sub-Inspector during investigation to corroborate the evidence given by the witness in Court. On the other hand, such improper admission of evidence will not in all cases compel interference by the superior Court unless the error has led to substantial injustice or has prejudiced the accused. (Rowland J.) Sanmon Tiwari v. Emperor.

AIR 1936 Pat 581 : 9 RP 211 : 2 BR 78 : 165 IC 761 : 38 Cr LJ 102.

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——A report made to the Police Officer cannot be used or relied upon as positive evidence. The matter is governed by S. 157, Evidence Act; such a statement can be used only to corroborate the testimony of the witness. (Skemp, J.) Harnam Singh v. Emperor.

AIR 1936 Lah 833 : 9 RL 218 : 38 PLR 203 : 165 IC 146 : 37 Cr LJ 1079.

——Corroborative value.

Evidence of witness cannot be corroborated by his statement to Police under S. 162. (Guha and Nasim Ali, JJ.) Ram Lal Ghose v. Emperor.

AIR 1934 Cal 717 : 7 RC 307 : 152 IC 681 : 36 Cr LJ 135.

——Placing before jury statements by accused to Police.

Placing before the jury the statements contained in Police papers examined by the Judge, for the purpose of corroboration or otherwise of the confessional statements of the accused and used as evidence in the case is in direct contravention of the provisions contained in S. 162, Criminal P. C., and no such reference in a charge to jury is permissible under the law. (Guha and Nasim Ali, JJ.) Kashim Ali v. Emperor.

AIR 1934 Cal 651 : 38 CWN 586 : 7 RC 256 : 152 IC 234 : 36 Cr LJ 70.

——Ss. 162, 172 — Evidence Act (I of 1872), Ss. 60, 155, 157 — Statement made to investigating officer —Whether can be used for corroborating testimony given at trial — Statement not reduced to writing — Proviso to S. 162 (1), applicability of.

Though S. 162 (1), Criminal P. C., is an application of the rule against hearsay evidence contained in S. 60, Evidence Act, that "oral evidence must in all cases whatever be direct," yet S. 162 (1), Criminal P. C., does more than re-state the rule contained in S. 60, Evidence Act, because by enacting that, no statement made to a Police Officer, nor any record thereof, shall be used "for any purpose at any inquiry or trial" repeals, by implication S. 157, Evidence Act, so far as concerns statements made to a Police Officer in the course of an investigation. Therefore, it prevents a statement made to an investigating Police Officer, or any record thereof, from being used either by the prosecution or the defence for the purpose of corroborating the testimony given at the trial by the person who made the statement to the Investigating Officer. Section 162 (1), Criminal P. C., has the further effect of modifying S. 155, Evidence Act. (Agarwala and Rowland, JJ.) Emperor v. Najibuddin.

AIR 1933 Pat 589 : 6 RP 339 : 14 PLT 543 : 147 IC 142 : 35 Cr LJ 379.

——To corroborate the testimony.

Section 162, Cr. P. C., clearly lays down that a statement made by a witness during investigation by Police can be used only for the purpose of contradicting him after certain formalities specified

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in the section have been complied with. The prosecution is not entitled to use such a statement for the purpose of corroborating the testimony of the witness. (Tekchand and Jailal, JJ.) Diwan v. Emperor.

138 IC 528 : 33 PLR 208 : Ind Rul (1932) Lah 509 : 33 Cr LJ 637.

——Ss. 162, 172—Use for corroborating prosecution witnesses.

It is contrary to law to make use of the Police diary for the purpose of corroborating the evidence of prosecution witnesses as given in Court, especially having regard to S. 162, Criminal P. C. (Dhavle, J.) Sakal Ahir v. Palakdhari Ahir.

AIR 1931 Pat 96 : 11 PLT 837 : Ind Rul (1931) Pat 215 : 131 IC 535 : 32 Cr LJ 735.

——Limits cannot be used for corroboration.

A statement by a person to the police in the course of the investigation of an offence cannot be used for any purpose at the trial of that offence except to contradict the evidence given at the trial by that person. In particular it cannot even if admitted to contradict, be used to corroborate the evidence of that person or to meet a suggestion of the defence. Where, however, the judgment of the lower appellate Court deals at length with the case of each of the petitioners independently of the inadmissible evidence and there is overwhelming direct and positive evidence against each accused and the accused have also not been prejudiced in any way, the infringement of the provisions of S. 132, Cr. P. Code, is under S. 167 of the Evidence Act, not a ground for a new trial or for the reversal of the decision of the lower Court. (Macpherson and Sen, JJ.) Ramiyad Dasadh v. Emperor.

AIR 1926 Pat 211 : 95 IC 273 : 7 PLT 673 : 1926 PHCC 13 : 27 Cr LJ 753.

——Under S. 162 as substituted by the Amendment Act of 1923 it is not permissible for statements to the police whether oral or written to be put in evidence in order to corroborate a prosecution witness or to contradict a defence witness. (Shah, Ag. C. J. and Fawcett, J.) King Emperor v. Vithi Balu.

AIR 1924 Bom 510 : 26 Bom LR 965 : 83 IC 1007 : 26 Cr LJ 223.

——Ss. 162, 172—Statements by witness to police officer— Admissibility in evidence of— Refreshing memory by police officer.

Held, that the express provisions of S. 162 of the Code of Criminal Procedure override the general provisions of S. 157 of Evidence Act and do not prevail against the express provisions of S. 162. The written record of statements of a witness to a police officer cannot be used either for the purpose of corroborating those witnesses or for the purpose of refreshing the memory of the police officer so as to enable him to depose to the state-

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ments by reference to those records. (Sunderlal and Piggott, A. J. Cs.) Bhulai Singh v. King-Emperor.

13 OC 7 : 5 Ind Cas 357 : 11 Cr LJ 117.

——Section, if overrides S. 154 of Evidence Act.

S. 162 of the Code does not control S. 157, Evidence Act. Oral evidence of a statement made to the Police by a witness to corroborate that witness deposition at the trial may be admitted. (Francis W. Maclean, C. J. and Carnduff, J.) Fanindra Nath Banerjee v. Emperor.

36 C 281 : 9 CLJ 199 : 13 CWN 197 : 5 MLT 97 : 7 Ind Cas 970 : 9 Cr LJ 452.

17. Limited use of previous statements—

(f) Omissions and discrepancies in the statement.

——Scope of—Statement made to police—Use of—Omission and contradiction.

A statement recorded by the police under S. 162, can be used for one purpose and one purpose only and that of contradicting the witness. Therefore, if there is no contradiction between his evidence in Court, and his recorded statement in the diary, the latter cannot be used at all. If a witness deposed in Court that a certain fact existed but had stated under S. 162, either that that fact had not existed or that the reverse and irreconcilable fact had existed it is a case of conflict between the deposition in the Court and the statement under S. 162, and the latter can be used to contradict the former. But if he had not stated under S. 162, anything about the fact, there is no conflict and the statement cannot be used to contradict him. In some cases an omission in the statement under S. 162 may amount to contradiction of the deposition in Court; they are the cases where what is actually stated is irreconcilable with what is omitted and impliedly negatives its existence. If the statement under S. 162 can be reconciled with the deposition in Court and can stand with it, there is absolutely no conflict.

An omission is not a contradiction unless what is actually said contradicts what is omitted to be said. The test to find out whether an omission is a contradiction or not is to see whether one can point to any sentence or assertion which is irreconcilable with the deposition in the Court. It would be quite meaningless to say that the entire statement under S. 162 contradicts the deposition; therefore, one cannot point to the entire statement as being irreconcilable with the deposition. (Raghubar Dayal and Desai, JJ.) Ram Bali v. State.

AIR 1952 All 289 : 1952 Cr LJ 609.

——Absence of unimportant details in case diary of the Police is no proof that the statements were not made by the witnesses. Statements recorded under S. 162 should be permitted for purposes of omission only when the Court is sure

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that the omission could not have taken place if the statements had really been made. Omission is only of value if it is of such importance that the witness would almost certainly have made it and the Police Officer would almost certainly have recorded it had it been made. (Mockett and Horwill, JJ.) In re Gurava Vannan.

AIR 1944 Mad 385 : 57 LW 171 : (1944) 1 MLJ 253 : ILR (1944) Mad 897 : 1944 MWN 213 : 217 IC 275 : 46 Cr LJ 294.

——Investigating officer deposing probably on basis of Police diary that witnesses had named accused—In cross-examination by accused, prosecution witnesses stating that accused were not named during investigation — The lower Courts, however, coming to the conclusion that it was the accused who really had sold the sugar in question to the first informant:

Held, that the High Court could not interfere in revision with that finding. The deposition was not in complete disregard of the provisions of S. 162. (Sinha, J.) Sagarmal v. Emperor.

AIR 1944 Pat 390 : 217 IC 102 : 46 Cr LJ 186.

——Ss. 162, 172—Omission of statement in diary—Proper way to prove omission.

Where the record made in the case diary does not purport to be either thorough or complete, the absence of a statement in the case diary is not in itself evidence that such a statement was not made. The proper way to prove an omission is to question the Police Officer who wrote the diary whether a particular statement was made to him. He may be able to say that it was not made to him because he feels sure that if it had been made, it would have found a place in the case diary. If he cannot say so, an omission cannot be proved by filing the case diary. (Horwill, J.) In re Packirisami Pillai.

AIR 1942 Mad 288 (2) : 14 RM 669 : 1942 MWN 591 : 55 LW 771 : 199 IC 833 : 43 Cr LJ 582.

——To prove omissions in statement.

Section 162, Criminal P. C., does not permit the use of statements to the Police for proving the omissions in the statement. The section provides that such statements can be used only for the purpose of contradiction. Contradiction means the setting up of one statement against another and not the setting up of a statement against nothing at all. (Grille and Gruer, JJ.) Sakhawat v. Emperor.

AIR 1937 Nag 50 : 19 NLJ 320 : 9 RN 163 : ILR (1937) Nag 277 : 167 IC 61 : 38 Cr LJ 330.

——Evidence — Tendency among Police Officers to try to remove all discrepancies in evidence of witness, deprecated—Proper procedure.

The tendency among Police Officers to try to remove all discrepancies in the evidence of witnesses as originally recorded in Police statements with the object, presumably, of presenting the

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Court trying the case with a picture of witnesses making consistent and coherent statements throughout is at once futile and does not convince any Court with any intelligence. While human beings remain what they are, human testimony is bound, in a complicated case, to be inconsistent. When a witness is making a statement covering a long period of time, it is not in the least likely that his statement will give every event in due sequence or that it will necessarily correspond with the statement of some other witness. A witness is bound to omit facts which he may subsequently recollect. It does not follow that the testimony of the witness is untrue because of the existence of any of these facts. Nevertheless it is for the Court that is trying the case to decide on the value of the testimony given in Court with reference to all previous discrepancies and omissions and it is not for the Police investigating the case to remove those omissions and discrepancies, and try to show the Court that they never existed. (Dalip Singh and Currie JJ.) Jahangiri Lal v. Emperor.

AIR 1935 Lah 230 : 7 RL 58 : 150 IC 1056 : 35 Cr LJ 1180.

——To prove admissions—Evidence Act, S. 145.

A statement under S. 162, Criminal P. C., cannot be used during an inquiry or trial in order to show that a witness is making statements in the witness-box which he did not make to the Police. It can only be used in order to show that the witness in the box is contradicting something he said before. Such statements should not be used, in order to show 'development' of the prosecution case. (Burn, J.) Ponnuswami Chetty v. Emperor.

AIR 1933 Mad 372 (2) : Ind Rul (1933) Mad 299 : 1933 MWN 90 : 37 LW 441 : 64 MLJ 519 : 56 M 475 : 143 IC 424 : 34 Cr LJ 582.

——Use by defence.

It cannot be laid down broadly that it is not open to the defence to use S. 162, Criminal P. C., to prove that in giving evidence at the trial, witnesses had made statements which had not been included in the records of previous statements made to the Police; there may be omissions in the previous statement which make it inconsistent with the evidence given in the Court and it must, therefore, be left to the Court in each particular case to decide whether the omission proved amounts to a contradiction or not.

The contents of a Police diary are not at the disposal of the defence and cannot be used except strictly in accordance with the provisions of Ss. 162, 172, Criminal P. C.

The accused has no right to insist upon a Police witness referring to his diary to refresh his memory; such use is at the discretion of the witness and the Judge and it is the duty of the Judge to see that the privilege attaching to the diary

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by statute is strictly enforced. (Coldstream and Jailal, JJ.) Mohinder Singh v. Emperor.

AIR 1932 Lah 103 : Ind Rul (1932) Lah 81 : 33 PLR 891 : 135 IC 209 : 33 Cr LJ 97.

——What amounts to.

Where an accused is not allowed to cross-examine a witness with reference to certain omissions in his statement to the police and statement in Court, it must be left to the Court in each particular case to decide whether the omission amounts to a contradiction or not. AIR 1926 Pat 362, Diss. from. (Harrison and Dalip Singh, JJ.) Hazara Singh v. Emperor.

AIR 1928 Lah 257 : 9 Lah 389 : 9 AI Cr R 559 : 108 IC 167 : 29 Cr LJ 348.

——Omissions can be proved.

To construe S. 162 as meaning that while any part of the statement of a witness to the police may be used to contradict him, yet if the contradiction consists in this that a statement made at the trial was not made in any part of the statement to the police, such a contradiction cannot be proved, seems to be an artificial construction and cannot be adopted. AIR 1926 Patna 20, Dissented. (Ross and Foster, JJ.) Iltaf Khan v. Emperor.

AIR 1926 Pat 362 : 5 Pat 346 : 7 PLT 634 : 95 IC 396 : 27 Cr LJ 796.

——Mode.

The provisions of S. 162 do not prevent the prosecution, after a witness has made a statement from asking him simply whether he made that statement to the police, or when a witness has made a statement in his evidence, from asking the Police Officer whether in fact the witness had made that statement to him. (Adami and Bucknill, JJ.) Guhi Mian v. Emperor.

AIR 1925 Pat 450 : 93 IC 988 : 4 Pat 204 : 27 Cr LJ 524.

17. Limited use of previous statements—

(g) Joint statements.

——S. 162 (1), first proviso— Joint statement of two or more witnesses cannot be used, for contradicting any witness. AIR 1937 Oudh 201, Foll. (Ranawat and D. S. Dave, JJ.) Lila Dhar v. The State.

ILR (1952) 2 Raj 1031 : 1953 Raj LW 348.

——Record of statements of witnesses in joint form —Effect.

See ibid, S. 161.

AIR 1950 Cal 365.

——Statements duly proved by the Police Officer recording them can be used for the purpose of contradicting witnesses; it is immaterial whether they were recorded jointly or not. AIR 1939 Lah 521, Differentiated. (Ghose C. J. and Ibrahim, J.) State v. Kishorilal.

1948 JLR 379.

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——Summary of joint statement made by two persons — Whether could be treated as individual statements by two persons.

It is improper to treat the individual statements of two different persons as a composite statement made up of information gathered from the two persons, it being impossible to say how much of the statement was made by one of them and how much was made by the other. (Wadsworth and Somayya, JJ.) In re Perha Guruswami Gounder.

AIR 1941 Mad 765 : (1941) 2 MLJ 209 : 54 LW 136 : 1941 MWN 766 : ILR (1942) Mad 77 : 14 RM 323 : 197 IC 54 : 43 Cr LJ 100.

———Police diary— Joint statement of prosecution witnesses— Whether can be allowed to be used by defence.

Where Police diaries were called for by the defence and it was found that what was recorded was a joint statement by the prosecution witnesses and other persons, and no separate record had been made of what was sought to be contradicted:

Held, that the Court should not allow the defence to use the statement as such a joint statement does not come within the ambit of S. 132, Criminal P. C.

If the joint statement means that more than one statement is contained in one document or that a number of statements have been recorded seriatim, then the defence may be allowed to see and use the statement of the particular witness although it is included in a record along with the statement of other persons. If, on the other hand, it means that the stories told by a number of witnesses have been boiled down by the Police Officer into a statement of his own, then the defence should not be allowed to use such a statement. (Lort-Williams and S. K. Ghose, JJ.) Emperor v. Karimuddi Sheikh.

AIR 1932 Cal 375 : 36 CWN 106 : Ind Rul (1932) Cal 592 : 139 IC 245 : 33 Cr LJ 725.

18. Oral statement or record thereof.

——Ss. 162, 537—The most reasonable reading of S. 162 as it stands without reference to previous legislation or judicial interpretation, is that the expressions "statement reduced to writing" and "record of a statement" are synonymous. Grammatically, and logically "such statement" can only mean oral statement and cannot include such oral statement reduced into writing. (O'Sullivan, A. J. C. on Difference of opinion between Ferrers A. J. C. and Rupchand, A. J. C.) Emperor v. Hari.

AIR 1935 Sind 145 : 28 SLR 397 : 157 IC 697 : 36 Cr LJ 1161 (2).

——Ss. 162, 172—Section 162, Criminal P. C., is applicable to memoranda and not merely to verbatim statements. (Grille, A. J. C.) Hamid Khan v. Emperor.

AIR 1933 Nag 4 : 28 NLR 291 : Ind Rul (1933) Nag 15 : 140 IC 825 : 34 Cr LJ 127.

CRIMINAL P. C. (V of 1898), S. 162—18. Oral statement or record thereof

——The words "shall any such statement.....be used" in para. 1, S. 162, apply to both oral and written statement. 4 Rang. 72 (FB), Ref. AIR 1925 Mad 579 : 26 Cr LJ 721 overruled. (Ramesam, Waller and Jackson, JJ.) Chinna Thimmappa v. Talukunae Thimmappa.

AIR 1928 Mad 1028 : 112 IC 682 : 51 Mad 967 : 1 M Cr C 201 : 28 MLW 314 : 55 MLJ 351 : 29 Cr LJ 1098 (FB).

——It is illegal for the Sessions Judge to allow questions to be put to various prosecution witnesses about what they said to the police, without the procedure detailed in the proviso to S. 162 having been carried out.

It is also illegal to allow the investigating officer to give evidence that such and such persons during the investigation gave him the names of the accused. (Campbell and Addison, JJ.) Bahadur Singh v. Emperor.

AIR 1926 Lah 367 : 7 Lah 264 : 8 LLJ 174 : 27 PLR 379 : 95 IC 467 : 27 Cr LJ 803.

——Admissibility.

The application of the new S. 162 is confined as that of the old one was, to the written record; the new section was designed to confer on an accused person legal right, which the old section did not give, of having a copy of such written statement for the purpose of using it to contradict the witness and as regards proof and use of oral statements, the law is unaltered and is as it was before. All oral statements which were previously admissible, under the Evidence Act, the use of which was not prohibited by the Cr. P. Code, are still admissible and may be used. (Wallace and Madhavan Nair, JJ.) Venkatasubbiah v. Emperor.

AIR 1925 Mad 579 : 85 IC 209 : 48 Mad 640 : 21 MLW 190 : 1925 MWN 68 : 48 MLJ 195 : 26 Cr LJ 721.

(Overruled in AIR 1928 Mad 1028 : 29 Cr LJ 1098).

——Statements of witnesses — Late record by Police.

Whatever reasons might be given by the police to record late the statement of the principal witnesses for the prosecution, the defence is entitled to ask that the evidence of those witnesses should be discarded inasmuch as there was sufficient time and opportunity for their being tutored. (Jwala Prasad, and Coutts, JJ.) Emperor v. Punit Chain.

AIR 1922 Pat 348 : 3 Pat LT 413 : 67 IC 581 : 1922 Pat HCC 218 : 4 UPLR (Pat) 53 : 23 Cr LJ 421.

——Statement by a witness admissible.

The police officer can under certain circumstances depose to what a witness deposed but the

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statement written by the Police Officer is not admissible in evidence. (Coutts and Ross, JJ.) Lachhmi Lal v. Emperor.

AIR 1922 Pat 40 : 3 Pat LT 398 : 65 IC 1002 : 1922 Pat HCC 159 : 23 Cr LJ 218.

(No longer good law.)

——Statements to Police — Oral evidence of such statements, if excluded.

Oral evidence of statements made to the Police, whether taken down in writing or not is not excluded by S. 162 of the Code as that section does not override the provisions of the Evidence Act as to oral evidence of such statements to corroborate the evidence of a witness. (Miller, C. J. and Adami, J.) Baldeo Koeri v. Emperor.

AIR 1921 Pat 122 : 2 Pat LT 565 : 61 IC 785 : 6 PLJ 241 : 22 Cr LJ 433.

——S. 162 and Evidence Act (I of 1872), S. 157 —Deposition of Police Officer.

Under S. 162, a Police Officer can depose to what a witness had said to him in the course of his investigation for the purpose of corroborating the witness in the trial court. S. 162 excludes only the writing. (Heaton and Shah, JJ.) Emperor v. Hanmaraddi Ramaraddi.

AIR 1914 Bom 263 : 39 Bom 58 : 16 Bom LR 603 : 26 IC 133 : 15 Cr LJ 690.

(This is no longer good law: The new section excludes the writing as well as the statement. Nor can it be used for corroboration.—Ed.)

——Oral evidence of statements to Police if admissible.

Oral evidence of statements to Police is admissible. The section only makes the record of such statements inadmissible. (White, C. J., Sankaran Nair and Ayling, JJ.) Emperor v. Nilakanta.

35 Mad 247 : (1912) MWN 207 : 22 MLJ 490 : 11 MLT 1 (Supp.) : 14 IC 849 : 13 Cr LJ 305.

——Oral evidence of statement recorded.

The reasons for which the written record of statements are excluded from evidence apply with equal force to a viva voce recital of statements from memory by the Police officer. (Sunderlal A. J. C. and Piggott A. J. C.) Bhulai Singh v. King Emperor.

5 Ind Cas 357 : 13 OC 7 : 11 Cr LJ 117.

——Ss. 162 and 172—Oral statements of witnesses recorded in diary under S. 172—Use of—(Evidence Act (1872), Ss. 145 and 161).

Oral statements of witnesses made to a police officer even though entered in the diary under S. 172 are admissible under the provisions of S. 162 and of that section only and the provisos as to the cross-examination of the police officer under Ss. 161 and 145, Evidence Act, which refer to his own statements do not apply to these statements of witnesses. The proper procedure is for the accused at the time the witness whose statement is so recorded appears before the court to ask the court to refer to such writing and if necessary to furnish the accused with copies. It is open to the accused to ask the police officer whether the witness made certain statement to him in order to impeach the credit of such witness under S. 155, Evidence Act, but it is very doubtful whether a police officer can refresh his memory as to such statement from his diary unless the writing is already in and had been put to the witness who is alleged to have made the statement. It is unfair to accept the police officer's perfunctory reading of his diary as proof of the statements. After they have been properly brought in under S. 162, they can subsequently be proved by the police officer. (Mitra and Holmwood, JJ.) Dadan Gazi v. Emperor.

10 Cal WN 890 : 4 Cr LJ 79.

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19. Use of statement in any other trial or inquiry.

——In the course of an investigation under this chapter—Report by A to police that B had been shot and had been removed to the hospital—Officer merely making entry in police diary and recording B's statement in hospital — Held B's statement fell within the scope of S. 162 and was not available in evidence against B in his prosecution under S. 211 Penal Code.

See ibid, S. 154.

AIR 1951 Mad 812 : 52 Cr LJ 857.

——Cross-examination of complainant's witnesses by reference to Police diary—Legality.

Where in an enquiry for prosecution of the complainant under S. 211, Penal Code for giving false information the Magistrate cross-examined the complainant's witnesses by reference to police diary:

Held, that the procedure adopted by the Magistrate was not in accordance with law. (Harries C. J. and Lahiri, J.) Kiran Bala Dassi v. Probodh Chandra Dey.

85 CLJ 337.

——Statements by persons to police not admissible.

Statements made by persons to the police and the statement made by the person who is not tried jointly with the accused, to the police are inadmissible against the accused (in a proceeding under S. 109, Cr. P. C.) (Lodge, J.) Bhanga Singh v. The King.

AIR 1948 Cal 290 : 49 Cr LJ 520.

——Complainant in assault case—If can be cross-examined on statement made to Police during investigation of another case.

The complainant in an assault case can be cross-examined on behalf of the accused by confronting him with a statement which the complainant made to the Police when they were investigating a case different from the case of assault.

Where the statement has not been made in the course of investigating the offence in respect of

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which the trial is held, neither the main part of S. 162, nor the proviso has any application. (Jackson and Mockett, JJ.) Subbaya v. Veerayya.

AIR 1933 Mad 65 (1) : 1932 MWN 1074 : Ind Rul (1933) Mad 102 (1) : 36 LW 759 : 63 MLJ 794 : 56 M 154 : 141 IC 276 : 34 Cr LJ 137 (1).

——Evidence Act, S. 32 (2)—Entry in Police diary —Statement made to Police Officer by third person regarding complicity of accused —Murder of maker of statement — Charge of accused for murder — Admissibility of entry in Police diary.

While investigating a dacoity case, a Police Officer made an entry in the diary that at a meeting he called of the villagers, P gave a statement that A and B had taken part in the dacoity along with others. Three days after this information having been given to the Police, P was assaulted, severely beaten and he subsequently died. Six men including A and B were charged under S. 302, I.P.C., with the murder of P. It was objected that the Police diary was not admissible in evidence:

Held, that as the trial for murder had never even been thought of at the time the entry was made and was not under investigation then, S. 162, Criminal P. C., did not apply but S. 32 (2), Evidence Act, applied and the statements were admissible under that section. (Young and Bajpai, JJ.) Abdul Aziz v. Emperor.

AIR 1932 All 442 : 1932 ALJ 301 : Ind Rul (1933) All 16 : 140 IC 578 : 34 Cr LJ 109.

——Admissibility as res gestae.

Where S lodged an information against J and made some statements before the Police during investigation and S was subsequently charged under Ss. 193, 192 and 211, I. P. C.:

Held, that the statements made by S to the Police were not inadmissible under S. 162 but were admissible as res gestae. (Lort-Williams and S. K. Ghose, JJ.) Jogesh Chandra v. Surendra Mohan Roy.

AIR 1931 Cal 637 : 35 CWN 838 : Ind Rul (1932) Cal 49 : 134 IC 1265 : 33 Cr LJ 60.

——Limits.

Section 162 does not prohibit the use of statements made by any person to a police officer in the course of an investigation under Ch. 14 of that Code, in proceedings under S. 476 of the Code, in cases where the alleged offence which is under consideration in the proceedings under S. 476 was not under investigation at the time when the statements were made. (Heald and Maung Ba, JJ.) U Htin Gyaw v. King-Emperor.

AIR 1927 Rang 113 : 5 Rang 26 : 6 Bur LJ 32 : 101 IC 465 : 8 AI Cr R 22 : 28 Cr LJ 433.

——Statements recorded by a Police officer under S. 162, Cl. (1), are inadmissible in evidence at the trial of the offence under investigation at the time when those statements were made. (Kincaid

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J. C. and Aston, A. J. C.) Bahadur Walad Rano Khaskheli v. Emperor.

AIR 1925 Sind 289 : 88 IC 7 : 19 SLR 71 : 26 Cr LJ 1063.

——Statement if could be made basis of prosecution under S. 211, Penal Code.

See Penal Code, s. 211.

11 Cr LJ 286 (Mad).

20. Application for copies.

——Right of defence to use unauthorised copies—Evidence—Admission of previous statements.

There is nothing in S. 162 which requires that the cross-examination shall have been opened; nor is there anything to show how the defence can be in a position to contradict the witness by his previous statement or to lay any foundation for the suggestion that there is a contradiction before it has seen the statement. Nor indeed is the Magistrate in a position to say whether there may not be a material contradiction between the two statements. In cases triable by the Court of Session, the accused would be well advised to make the requisite application at the proper time in the Court of the committing Magistrate but, if he fails to do this, it would not be to his interest, nor would it be warranted by law for him to postpone his application until the witness has entered the witness-box or is on the point of being cross-examined. The expression "called for the prosecution" refers to the point of time when the prosecution decides to examine a witness and takes proper steps to secure his attendance or cites him at the enquiry or trial. It is clearly to the advantage of the accused that he should be supplied with the copies of the statements before the witnesses enter the witness-box and that the proper time to make the application is as soon as possible after suitable steps have been taken to secure the attendance in Court of the prosecution witnesses. There need be no delay in supplying copies if application for them is made at the proper time before the witness enters the witness-box. There will be no necessity for granting inconvenient adjournments and in jury trials discussion before the jury regarding the contents of the diary will be avoided.

It is essential that the copy should be an accurate one.

The words "any part of such statement, if duly proved," lay emphasis on the necessity for proving the statement of the witness. They do not refer to the proof of the writing, for proof of the writing alone does not show that the witness actually made the statement by which it is sought to contradict him. It is of the utmost importance that "in the manner provided by S. 145, Evidence Act" the attention of the witness should be called to those parts of the recorded statements by which it is intended to contradict him in order to enable him, if he desires to do so, to furnish an explana-

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tion for any alleged contradiction or material omission. (Edgley and Roxburgh, JJ.) Emperor v. Ajit Kumar Ghosh.

AIR 1945 Cal 159 : 18 RC 122 : 78 Cal LJ 217 : 220 IC 237 : 46 Cr LJ 692.

——Copies, when granted.

The proper stage at which to apply for a copy of a witness's statement is at the beginning of the cross-examination. In practice, however, copies are either granted in advance or the Court reads out the relevant part of the accused's statement or the Vakil is allowed to look into the diary. In the last two cases, copies must still be furnished if required, but the examination of witnesses need not be held up while this is being done. (Horwill, J.) In re Subbaramiah.

AIR 1942 Mad 451 : 15 RM 920 : 55 LW 223 (1) : (1942) 1 MLJ 489 : 1942 MWN 595 : 205 IC 632 : 44 Cr LJ 400.

——Time to apply for copies.

The accused may apply for a copy of the statement of a witness to the Police at any time after he has been called, that is, at any time after the witness has entered the witness-box and while he is giving evidence. The cross-examination of the witness must be adjourned until the necessary copy has been given. (Mya Bu and Dunkley, JJ.) Nga U Khine v. Emperor.

AIR 1935 Rang 98 : 7 R Rang 332 : 13 R 1 : 155 IC 66 : 36 Cr LJ 665.

——Copies — Use of — Whether can be admitted after evidence of witness is closed — Evidence Act, S. 145.

Under S. 162, Criminal P. C., the only use to which copies of statements of prosecution witnesses may be put is under S. 145, Evidence Act, to contradict a witness, and for this purpose, the attention of the witness must be drawn to the statements and the time when the application should be made is "when any witness is called for the prosecution." The section does not authorise the granting of such copies after the evidence of the witnesses has closed, and there is no use to which such statements can then be put. (Bennet, J.) Suraj Bali v. Emperor.

AIR 1934 All 340 : 7 RA 320 : 56 All 750 : 152 IC 349 : 36 Cr LJ 65.

——Proper time for making application.

Under S. 162, Criminal P. C., an accused is entitled to make an application, after the examination of the prosecution witnesses and before their cross-examination, for copies of the statements of those witnesses recorded under S. 161. The view that the accused is not entitled to be furnished with such copies before he lays the foundation by cross-examination for the suggestion that the evidence given in Court is contradicted by the statement recorded under S. 161, is erroneous. (Bennet, J.) Tahal Saithwar v. Emperor.

AIR 1931 All 34 : 1931 ALJ 10 : Ind Rul (1931) All 312 : 53 All 94 : 130 IC 696 : 32 Cr LJ 578.

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——No copy prior to cross-examination.

So far as proceedings before charge are concerned, copies of witness's statements made to the police should not be granted until the stage of cross-examination is reached. If that stage is allowed to go by without application being made, an accused must wait until the witness is again about to be subjected to cross-examination before he can claim grant of a copy. Under S. 145, Evidence Act, until the occasion arises for putting the statement to the witness it cannot legally be used for any purpose whatsoever. It should not therefore be placed in the accused's hands until that stage in the trial has been reached when he may so use it. AIR 1926 Mad 183; AIR 1929 Cal 182 and AIR 1923 Bom 23, Ref.; AIR 1927 Cal 514, Doubted. (Curgenven, J.) Public Prosecutor v. Vedi.

AIR 1930 Mad 185 : 122 IC 463 : 1930 Cr C 185 : 2 M Cr C 243 : 1929 MWN 885 : 31 MLW 241 : 31 Cr LJ 414.

——An accused person is not entitled to a copy of a statement made by a prosecution witness under S. 162, until the witness is sought to be cross-examined. But as a matter of practice there is no harm if a copy of the statement is given at an earlier stage. AIR 1928 Bom 23, Ref. (Skemp, J.) Ghulam Nabi v. Emperor.

AIR 1929 Lah 429 : 117 IC 377 : 30 Cr LJ 760.

——An accused person has a right to apply for copies as soon as a witness is called for prosecution either in an inquiry or in a trial. (Staples, A. J. C.) K. Fasiuddin v. Emperor.

AIR 1929 Nag 172 : 117 IC 213 : 1929 Cr C 47 : 30 Cr LJ 728.

——At the trial the accused applied for copies of statements made by the witnesses for the prosecution and it was ordered by the trying Magistrate that the copies should be granted at the commencement of the cross-examination of each witness. But the pleader for the defence did not file any folios and did not do the necessary acts to get the copies, saying that it would be inconvenient for him to file folios at that stage and it was no use to get copies at a subsequent time.

Held, that the grievance of the defence that they were not given their rights under S. 162 was groundless and under the circumstances it was needless to consider whether the proper time for granting the copies was at the commencement of the cross-examination or at the time when the witness enters the witness-box. (Rankin, C. J. and Buckland, J.) Babarali Sardar v. Emperor.

AIR 1929 Cal 182 : 49 CLJ 197 : 116 IC 167 : 13 AI Cr R 8 : 56 Cal 840 : 30 Cr LJ 580.

——If the accused have not availed themselves of the opportunity of asking for the copies of the statements during the committing Magistrate's enquiry, they have no further right under S. 162 than to go to the Judge at the time of the trial

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and ask him to grant such copies. (Rankin, C. J. and Buckland, J.) Babarali Sardar v. Emperor.

AIR 1929 Cal 182 : 49 CLJ 197 : 116 IC 167 : 56 Cal 840 : 13 AI Cr R 8 : 30 Cr LJ 580.

——Prior to cross-examination.

The opportune moment for making an application for copies of the statements made by the witnesses before the police is after the witnesses are examined on behalf of the prosecution. It is not necessary that the accused must have laid the foundation for being entitled to cross-examine the prosecution witnesses upon the statements made by them before the police. AIR 1927 Cal 514 and AIR 1927 Pat 243, Diss. from; AIR 1927 Pat 325 and AIR 1928 Pat 215, Foll. (Jwala Prasad, J.) Krishna Sinha v. Emperor.

AIR 1928 Pat 593 : 110 IC 459 : 10 AI Cr R 383 : 29 Cr LJ 715.

——Cross-examination need not have begun.

All that the section requires is that the witness for the prosecution should be produced in Court. There is nothing in the section which requires that the cross-examination shall have been opened. The defence cannot be in a position to contradict the witness by his previous statement or to lay any foundation for the suggestion that there is a contradiction before it has seen the statement. 33 Cal 1023, Rel. on; AIR 1927 Cal 514; AIR 1926 Mad 183 and AIR 1927 Pat 243, Diss. from. (Jwala Prasad and Ross, JJ.) Ramgulam Teli v. Emperor.

AIR 1928 Pat 215 : 7 Pat 205 : 9 PLT 92 : 107 IC 817 : 10 AI Cr R 12 : 29 Cr LJ 297.

——When witness concerned enters the box.

An accused is entitled to get a copy of the statements of a witness on behalf of the prosecution for the purpose of contradicting the prosecution witness in the manner provided by S. 145, Evidence Act, but such an application must be made at the time when the prosecution witness, whom it is desired to cross-examine by reference to his previously recorded statement, appears in the witness-box. 33 Cal 1023; AIR 1926 Mad 183 and AIR 1927 Cal 514, Foll. (Patkar and Baker, JJ.) Shaik Usman v. Emperor.

AIR 1928 Bom 23 : 52 Bom 195 : 9 AI Cr R 476 : 107 IC 57 : 29 Bom LR 1581 : 29 Cr LJ 221.

——Contradiction — Necessary.

The question of furnishing to the accused a copy of the statement of a witness recorded by the police in the course of the investigation into an offence does not at all arise until the witness is called for the prosecution at the inquiry or trial in respect of the offence and the Court is not competent to direct that the accused be furnished with a copy of such statement unless it contains something which constitutes a contradiction to a statement made by the witness in his deposition

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at such inquiry or trial. (Jwala Prasad and Macpherson, JJ.) Sasdat Mian v. King-Emperor.

AIR 1927 Pat 243 : 103 IC 597 : 6 Pat 329 : 8 AI Cr R 383 : 8 PLT 780 : 28 Cr LJ 709.

——The accused is entitled to be furnished with copies of statements of witnesses only after the witness has been called for the prosecution and the cross-examination has laid the foundation for the suggestion that the evidence given by the witness in Court is contradicted by his statement recorded under S. 161 and not before the commencement of the preliminary enquiry. (Chotzner and Duval, JJ.) Madari Sikdar v. Emperor.

AIR 1927 Cal 514 : 54 Cal 307 : 102 IC 550 : 8 AI Cr R 112 : 28 Cr LJ 582.

——Prior to cross-examination.

To interpret the section to mean that the copies can be demanded only after cross-examination of a witness is begun, would lead to inconvenience and delay in the trial. (Kotval, O. J. C.) Hari Mahadeo Gore v. Emperor.

AIR 1927 Nag 24 : 9 NLJ 167 : 99 IC 46 : 7 AI Cr R 170 : 28 Cr LJ 14.

——The stage when the accused is entitled to ask for a copy of deposition of a witness before police is when the witness is under cross-examination, and has already made the statement which the accused wishes to contradict by proof of his former statement to the police. (Krishnan and Wallace, JJ.) Peramasami Rayudu In re.

AIR 1926 Mad 183 : 91 IC 532 : 22 MLW 784 : 27 Cr LJ 100.

——Ss. 162, 164 — Right of accused person to have copies of statements recorded by Magistrate — Evidence Act, Ss. 74, 76.

An accused person under remand, is not entitled, either under the common law or under the Code, to copies of statements recorded by a Magistrate, under Ss. 162 and 164 of the Code before the preliminary enquiry commences. The question, whether he is entitled to such copies cannot be determined with reference to the question. The fact that the statements are public documents within s. 74 Evidence Act, cannot decide the question of his right to get their copies. S. 76 of that Act only provides the means of proof of public document which any person has the right to inspect. The question whether any person has a right to inspect any particular public document is not dealt with by the Evidence Act and that is altogether outside its scope. (Benson and Wallis, JJ.) Emperor v. Muthia Swamiyar.

30 M 466 : 17 MLJ 471 : 3 MLT 14 : 6 Cr LJ 346.

——S. 162 — Right of accused to copies of statements.

The statement made by a person previously under S. 162 may be put in to contradict his testimony given by him at the preliminary enquiry and then that statement will become part of the

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record, the accused will be entitled to a copy of the statement after commitment. No provision similar to S. 173 prohibits the use of the statement in evidence. (Benson and Wallis, JJ.) Emperor v. Muthia Swamiyar.

30 M 466 : 17 MLJ 471 : 3 MLT 14 : 6 Cr LJ 346.

21. Grant of copies of statements.

(a) Introductory.

(b) Right of the accused.

(c) Duty of the Court.

(d) Refusal to grant copies.

21. Grant of copies of statements.—

(a) Introductory.

——Right to copies—Value of.

The right to be furnished with copies of statements made by witnesses to a police officer given to an accused person by S. 162 is a very valuable one and often provides important material for cross-examination of the prosecution witnesses. However slender the material for cross-examination may seem to be, it is difficult to gauge its possible effect. Minor inconsistencies in his several statements may not embarrass a truthful witness but may cause an untruthful witness to prevaricate. (Lords Wright, Simonds, Uthwatt and Sir John Beaumont.) Kattaya v. Emperor.

AIR 1947 PC 67 : 1947-1 MLJ 219 : 51 CWN 474 : 60 MLW 258 : 1947 MWN 217 : 230 IC 135 : 1947 ALJ 355 : 13 BR 450 : 49 Bom LR 508 : 74 IA 65 : 48 Cr LJ 533 (PC).

——Court, if has discretion to refuse copies—Such statements, when privileged.

Per O'Sullivan, A. J. C. (agreeing with Rupchand, A. J. C.) — Section 132, Criminal P. C., in its present form, allows a Court no discretion to refuse to an accused person copies of statements of witnesses recorded by the Police in the course of an investigation, whether such statements are recorded in a Police diary, or otherwise, unless proviso (2) to the section applies. This is the case whether the statements are in extenso or are in the form of compressed memoranda and whether they are recorded in the third person or in the first person, provided they are such statements as can be utilized to contradict a witness with his statement in Court in the manner provided by S. 145, Evidence Act. It is just as possible to contradict a witness on a memorandum as it is on a full statement and it is generally immaterial for the purpose of contradiction whether or not the statement is in the actual words of the witness.

In furnishing a copy of a witness's statement to the Police, the Court should be careful to ensure that what is being granted is really such statement by a witness as could legitimately and properly be used under S. 145, Evidence Act, for the purpose of contradicting the witness. That is to say, if what is recorded by the Police either

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in the diary or otherwise, irrespective of the length or form, does not amount to a statement by a witness, such note would clearly be privileged. If it amounts to a statement in whatever form or at whatever length, it cannot be withheld. (O'Sullivan, A. J. C. on Difference of opinion between Ferrers, J. C. and Rupchand, A. J. C.) Emperor v. Hari.

AIR 1935 Sind 145 : 28 SLR 397 : 157 IC 697 : 36 Cr LJ 1161 (2).

——Second Proviso to S. 162 — Part of statement, when excluded — Part of statement, when used for contradiction must be proved.

Under the second proviso to S. 162, Criminal P. C., the Judge (or Magistrate) should exclude from the copy supplied any part of the statement which in his opinion, satisfied one or other of two conditions, viz. (1) that it is irrelevant or (2) that its disclosure to the accused is both unessential in the interests of justice and inexpedient in public interest. There are only two separate and distinct conditions under which a part of the statement can be excluded. To justify exclusion under the second of the above conditions, the two circumstances mentioned therein must exist together in conjunction. If he excludes any part of the statement, the Judge (or Magistrate) must record the opinion on which he bases such exclusion, but not his reasons for that opinion.

Those parts of the statement to the Police which are used in cross-examination to contradict the witness must be proved and brought on to the record. This can ordinarily be done by the admission of the witness that he made the statement, or by examination of the Police Officer, who recorded it. If the latter course is necessary, in order to avoid delay, there can be no objection to allowing cross-examination subject to subsequent proof of the statement. (Mya Bu and Dunkley, JJ.) Nga U Khine v. Emperor.

AIR 1935 Rang 98 : 13 R 1 : 7 R Rang 332 : 155 IC 66 : 36 Cr LJ 665.

——Witness agreeing with statement.

The procedure under S. 162, Criminal P. C., applies where the witness agrees with the statement. The language of the section is comprehensive. The distinction between a statement and a record thereof is a distinction between the oral statement and the written record in the diary of that oral statement. The language of S. 163 covers all cases of any use of the statements to the investigating officer except as excepted by the Cr. P. C. Where a witness is called and the statement to the Police is made the subject of cross-examination, then the Court should make a reference to that written statement and make a note of what the written statement actually says. It is not proper to rely on the memory of a witness as to what he thinks many months afterwards, he stated to the investigating officer. When the writing itself is available, the Court should refer to that writing

CRIMINAL P. C. (V of 1898), S. 162—21. Grant of copies of statements—(a) Introductory

and make a note on the record. (Thom and Bennet, JJ.) Emperor v. Sheo Dayal.

AIR 1933 All 535 : 55 A 689 : 6 RA 437 : 147 IC 15 : 35 Cr LJ 360.

——Supplying of copy of charge-sheet to defence.

The charge sheet contained a summary of the statement of each witness to the chief Constable. If a copy of the charge sheet is supplied to the defence the provisions of S. 162 will be rendered nugatory. It is an improper course on the part of the Civil Court to supply such a copy to the defence. (C. A. Kincaid.) King Emperor v. Manubha Umedsing.

14 KLR 257 : 1 Cr LJ 1027 (Kathiawar).

21. Grant of copies of statements—

(b) Right of the accused.

——Right of accused to ask for copies of statements to police— Failure to ask for copies — Effect.

Section 162, Criminal P. C., clearly states that a request for the statements must be made. The request need not be by means of an application, but unless the defence makes a request for copies of statements made to the police and thereby indicates its intention to make use of them, they do not earn a right to complain that they had been prevented from cross-examining the witnesses by reference to statements made to the police.

Hence, in case where the statements of certain witnesses to the police had been recorded in a boiled form in contravention of the clear provisions of S. 161 (3), the accused is not entitled to complain about the irregularity in the procedure when it is not proved that he had made any request for copies of the statements to police. (Chakravartti and Sinha, JJ.) Dhirendra Nath v. State.

AIR 1952 Cal 621 : 1952 Cr LJ 1427.

——Statements recorded under R. 254 (b) Police Regulation, Bengal are not privileged and accused is entitled to get copies of such statements for cross-examination of witnesses under S. 145, Evidence Act.

See Evidence Act (1872), S. 145.

AIR 1950 Cal 165 : 51 Cr LJ 680.

——Ss. 162, 172—Right of accused to inspect or get copy of Police papers.

An accused is entitled to inspection. If he so desired, a copy of both statements of persons examined by the Police Officer under Ss. 162 and 172 on which his report is based and also the report which he has prepared on inquiry or investigation made by him should also be given. Both these form part of the record in the case. (Mosely, J.) Maung Shein v. The King.

AIR 1942 Rang 51 (1) : 1941 Rang LR 590.

——Fact that statements are in shape of rough memoranda, if relieves prosecution of liability —

CRIMINAL P. C. (V of 1898), S. 162—21. Grant of copies of statements—(b) Right of the accused

Witnesses' opinion that they are not traceable—Denial of right—Irregularity—Prejudice.

An accused has a legal right to statements made by the prosecution witnesses whenever they are reduced to writing. The fact that the statements were only reduced to writing in the shape of rough memoranda or notes does not relieve the prosecution of this liability.

If the notes are in existence, they must be traceable, or at any rate some serious effort should have been made to find them, and satisfactory reasons given for their non-discovery. A mere statement by a witness that it will not be possible to trace them is not enough, in the absence of evidence to show what efforts were made to do so. It is for the Court to decide whether they are really traceable or not, and not for a witness. His opinion about the matter is irrelevant. All he is there for is to furnish the Court with facts on which it can form an opinion.

A denial of accused's right to the statements ordinarily constitutes an illegality which cannot be cured, because the extent of the prejudice caused cannot be gauged. (Bose, J.) Vishwanath Pandurang v. Emperor.

AIR 1936 Nag 249 : 10 RN 70 : ILR (1937) Nag 178 : 170 IC 638 : 38 Cr LJ 936.

——Statement, if can be used without request of accused.

Under S. 132, Criminal P. C., a statement made by a person to a Police Officer in the course of an investigation, whether oral or reduced to writing, cannot be used for any purpose, save on the request of the accused (or, his pleader). The Judge (or Magistrate) has no authority to look at the Police papers unless requested to do so by the accused. On the request of the accused, the Judge (or Magistrate) must refer to the statement of a witness to the Police, if it has been reduced to writing, whether that statement is separately recorded or recorded in a Police diary. The purpose for which the Judge (or Magistrate) refers to the statement is in order to see whether any part of the statement ought to be excluded under the second proviso to the section, and not for the purpose of deciding whether there is in the statement material for cross-examination of the witness in the manner provided by S. 145, Evidence Act. Subject to any part being excluded under the second proviso to the section, the accused is entitled to a copy of the whole of the statement to the Police. It is not for the Court to decide whether there is any variation between the statement in examination-in-chief and the statement recorded by the Police. Subject to the power of the Judge (or Magistrate) to disallow any question which, in his opinion, does not fall within the scope of S. 145, Evidence Act, it is for the accused or his pleader to decide in what manner and to what

CRIMINAL P. C. (V of 1898), S. 162—21. Grant of copies of statements—(b) Right of the accused

extent he will use the statement for the purpose of cross-examination ; but the cross-examination on the statement must be confined to alleged contradictions between the statement and the evidence-in-chief of the witness, and must be carried out in the manner provided by the latter part of S. 145, Evidence Act, i.e., by calling his attention to the parts of the statement which it is intended to use for the purpose of contradicting him. (Mya Bu and Dunkley, JJ.) Nga U Khine v. Emperor.

AIR 1935 Rang 98 : 13 R 1 : 7 R Rang 332 : 155 IC 66 : 36 Cr LJ 665.

——The accused has a right to obtain a copy as soon as the witness for prosecution is called for the examination and not when he has been examined. (Munje, A. J. C.) Murtiza Khan v. Emperor.

AIR 1934 Nag 138.

——When the statement of a prosecution witness has been reduced into writing whether in a police diary or otherwise, the accused, under the new Code, is entitled to ask the Court to refer to it and to be furnished with a copy of it. 33 Cal, 1023, Dist. (Darwood. J.) Sulaiman Mahamed v. Emperor.

AIR 1929 Rang 87 : 6 Rang 672 : 115 IC 899 : 12 AI Cr R 327 : 30 Cr LJ 538.

——Statement made by an approver to the police before he is tendered a pardon, is a previous statement of a witness and it can be used either to corroborate him or to contradict him under the ordinary provisions of the Evidence Act and therefore the accused is entitled to have a copy of such statement. (Harrison and Dalip Singh, JJ.) Hazara Singh v. Emperor.

AIR 1928 Lah 257 : 9 Lah 389 : 108 IC 167 : 9 AI Cr R 559 : 29 Cr LJ 348.

——Ss. 162 and 439— Police diaries — Statements in — Omission in copy — Discovery — Cross-examination.

During an appeal against a conviction it was discovered that an accused person was furnished with materially inaccurate copies of the statement of prosecution witness recorded in the Police diary. The accused applied to have that witness recalled for the purpose of re-cross-examination to impeach his credit.

Held, that the accused was entitled to have the witness recalled for re-cross-examination. The Court below committed a grave error of law in refusing the application which justified interference by the High Court, in revision. (Atkinson and Adami, JJ.) Sadanand Misra v. Emperor

AIR 1920 Pat 378 : 55 IC 337 : 21 Cr LJ 289.

——Right of accused to get copies of statements to the Police — Refusal — If reason should be stated.

An accused is not entitled as of right to get copies of statements made to the Police under S.

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162 and a Magistrate refusing to furnish such copies need not specifically say that it is not in the interests of justice. (Sadasiva Aiyar, J.) In re Thiruvengada Mudali.

AIR 1914 Mad 376 : 26 MLJ 182 : (1914) MWN 484 : 23 IC 497 : 15 Cr LJ 289.

21. Grant of copies of statements.—

(c) Duty of the Court.

——Court cannot delegate discretion under S. 162 to counsel for prosecution.

Where the statute requires the Court to exercise its discretion it cannot rid itself of it by delegating its powers to anybody else.

It is the duty of the Court under S. 162 to decide what was or was not relevant and that duty cannot be delegated, specially to counsel for the other party, namely, the prosecution. (Harries C. J. and Bose, J.) Mohammad Illias v. The State.

AIR 1951 Cal 212 : ILR (1951) 2 Cal 360 : 51 Cr LJ 1581.

——Accused's right to copies.

The accused must be furnished with copies of statements of witnesses recorded by the police under S. 161 when the witnesses are examined in Court whether the statements are recorded in full or whether the records consist only of the gist of the statements. (Sen, J.) Balabux Darolia v. The King.

AIR 1950 Cal 353 : 54 CWN 286 : 51 Cr LJ 1334.

——S. 162, Proviso and S. 297 — Notes of statements of witnesses destroyed by police—Accused not getting copies of statements—Evidence of such witnesses cannot be expunged as inadmissible—Proper course to be followed stated — Failure to adopt proper course amounts to misdirection.

Where notes of statements of witnesses made by police are destroyed and consequently the accused does not get copies of those statements for the purpose of cross-examining these witnesses it cannot be said that the Judge should expunge the evidence of these witnesses as inadmissible. All that the Court can do in such a case is to consider whether any and what presumption can be made against the prosecution in the circumstances of the particular case. It cannot be said that the evidence of an important witness of unimpeachable credit, intelligence and reliability is to be expunged or disbelieved merely because an investigating officer has failed to comply with the terms of S. 161 of the Code or has destroyed the record he made of the statements of the witnesses. On the other hand, in a doubtful case where the Court may be in two minds as to whether to accept the evidence of a rather unsatisfactory witness, the absence of the material that ought to exist for cross-examination might well turn the scale particularly where the record had been deliberately destroyed. The Court may.

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if it thinks fit, presume that, where the records have been destroyed this has been done for reason, for example, because police wanted to improve on the evidence.

Where a Judge in a trial with the aid of a jury meets a case of this sort his proper course is to direct the jury on the lines indicated above according to the circumstances of the particular case. He cannot exclude the evidence as inadmissible. Where the Judge gave no such directions but merely commented unfavourably on the police officer's conduct without directing the jury as to how they should deal with the matter as affecting the credibility of the evidence this amounts to misdirection.

(In this case as the misdirection directly related to the question whether the witnesses were to be believed or not and the verdict of the jury showed that a slight difference in directions might have altered the view of those hearing the witnesses, a retrial was ordered.) (Roxburgh and Chakravartti, JJ.) Laxman Chandra v. Emperor.

AIR 1948 Cal 278 : 1948 AWR Sup 81 : 1948 OA Sup 81 : ILR (1948) 2 Cal 364 : 52 CWN 401 : 49 Cr LJ 469.

——Court, if must satisfy itself that contradictions exist.

Section 162, Criminal P. C., does not require the Court to satisfy itself before granting a copy to the accused that a certain contradiction exists, and subject to the provisions of the second Proviso regarding any part of the statement, the Court must grant the copy and it is for the accused's counsel to examine it after it is granted to discover whatever contradictions may exist. (King, J.) In re Dastgir.

AIR 1937 Mad 822 : 1937 MWN 730 : 46 LW 323 : (1937) 2 MLJ 402 : 10 RM 418 : ILR (1938) Mad 180 : 171 IC 962 : 39 Cr LJ 54.

——Court's duty to give copies — Who should move Court — Trial Court, whether should refer to previous statements suo motu — Court, when should voluntarily give copy to accused.

Section 162, Criminal P. C., entitles an accused person to request a trial Court to refer to a statement previously made by a prosecution witness to a Police Officer during investigation. The Court, when so requested, is bound to refer to such statement and is bound to provide a copy of it unless of opinion that it is irrelevant. The onus of moving the Court rests upon the accused, but the accused may not know what a witness has stated to the Police and, therefore, may not use his privilege when it might assist him. A Judge is clearly at liberty to adopt a course at his own instance, which he is bound to do if requested by the accused, and a trial Court should refer to previous statements of witnesses, even if not requested by the accused, and if such reference reveals any point materially in favour

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of the accused, it should not be disregarded but the Court should give a copy to the accused of its own motion in order to prevent a failure of justice. (Middleton, J. C. and Mir Ahmad A. J. C.) Sultan Mir v. Emperor.

AIR 1937 Pesh 10 : 9 R Pesh 75 : 166 IC 876 : 38 Cr LJ 347.

——Accused requesting Court to refer to such statement which does not fall under S. 162, proviso 2.

Under S. 162, Criminal P. C., a statement made by any person to a Police Officer in the course of an investigation can be referred to or used for any purpose by the Court or anyone else at an inquiry or trial in respect of an offence under investigation at the time when such statement was made, except as provided in that section. It matters not whether the statement was made orally or was reduced to writing, or whether in extenso or in an abridged form it is set out in a special diary under S. 172, Criminal P. C., or in any other document, or whether it is proposed to adduce oral evidence of the contents of the statement. If, and so soon as, any prosecution witness gives evidence in support of the charge against him, the accused is entitled to request the Court to refer to that witness's statement to the Police, and unless the Court is of opinion that any part of the statement falls within the second proviso to S. 162, the Court must direct that the accused be furnished with a copy of the entire statement of the witness to the Police, whether or not in the opinion of the Court there is anything in the statement which is inconsistent with the evidence that the witness has given in the course of the inquiry or trial; and the statement, in whole or in part as the case may be, may then be used in the manner prescribed in proviso 1 to S. 162. (Page C. J.; Mya Bu, Baguley, Sen and Mosely, JJ.) Emperor v. Nga Lun Thaung.

AIR 1935 Rang 370 : 13 R 570 : 8 R Rang 202 : 158 IC 784 : 36 Cr LJ 1487 (FB).

——Judge's duty to ask Pleader if he wants copy of statement—Procedure.

As soon as a defence Pleader asks a witness a question concerning his statement to the Police, it is the bounden duty of the Judge to ask the Pleader whether he wishes to have a copy of that witness's statement to the Police supplied to him or not. If the Pleader does not desire a copy of the statement, then all questions concerning the witness's statement to the investigating officer should be disallowed. If he does desire a copy of the statement, it should be supplied, and should be proved, used for the purpose of cross-examining the witness and brought on the record in the proper way. (Dunkley, J.) Nga Tha Aye v. Emperor.

AIR 1935 Rang 299 : 8 R Rang 168 : 158 IC 441 : 36 Cr LJ 1380.

CRIMINAL P. C. (V of 1898), S. 162 — 21. Grant of copies of statements—(c) Duty of the Court ——Refusal entails remand.

If during the course of the trial after the charge is framed the accused desires to cross-examine prosecution witnesses further and applies to the trying Magistrate to grant him copies of the statements made by the witnesses to the police during the investigation, the Magistrate should allow him such copies and should not pass judgment without disposing of such application, and if the appellate Court finds that the statements of witness were recorded in the diary he should remand the case and allow the copies to the accused. AIR 1929 Rang 87, Rel. on. (Subhedar, A. J. C.) Raghva v. Emperor.

AIR 1929 Nag 240 : 119 IC 675 : 1929 Cr C 264 : 30 Cr LJ 1097.

——Court's opinion immaterial.

The language of S. 162 is mandatory and the Court has no power to refuse the application once it had been made unless the case comes under the second proviso to S. 162 and in his opinion the statement made by the witness is not relevant to the subject-matter of the inquiry or trial and that its disclosure to the accused was not essential in the interest of justice and was inexpedient in the public interest. There is nothing in S. 132 to authorize the Court to look into the statement in the police diaries for the purpose of finding out whether it is contradictory to the statement made in Court or not before granting the application. That is the function of the lawyer for the accused after a copy of the statement has been granted to him. AIR 1928 Pat 215, Rel. on; AIR 1927 Cal 514, Diss. (Courtney-Terrell, C. J. and Fazl Ali, J.) Jhari Gopa v. Emperor.

AIR 1929 Pat 268 : 8 Pat 279 : 10 PLT 460 : 118 IC 130 : 1929 Cr C 21 : 30 Cr LJ 858.

——It would be convenient in practice if the Magistrate were to refer beforehand to the police or the Excise authorities and enquire if there is any objection to the copies being given. (Skemp, J.) Ghulam Nabi v. Emperor.

AIR 1929 Lah 429 : 117 IC 377 : 30 Cr LJ 760.

——Per Rankin, C. J.—It is not the intention of the amended section that the Judge should consider whether a foundation has been laid by way of cross-examination before copies of statements can be granted : (Obiter) AIR 1927 Cal 514, Doubted. (Rankin, C. J. and Buckland, J.) Baharati Sardar v. Emperor.

AIR 1929 Cal 182 : 49 CLJ 197 : 116 IC 167 : 56 Cal 840 : 13 AI Cr R 8 : 30 Cr LJ 580.

——Imperative upon the Court.

Per Jwala Prasad, J.—The discretion which vested in the Court formerly of granting copies under S. 162 has now been taken away by the amendment, and it has now become imperative upon the Court to grant copies to the accused at his request. The words "the Court shall refer to such writing" are obviously for the purpose of enabling the Court to exercise discretion under prov. 2, and not for the purpose of restricting the right of the accused to obtain a copy, the discretion wherein has been expressly taken away by the legislature. (Jwala Prasad and Ross, JJ.) Ramgulam Teli v. Emperor.

AIR 1928 Pat 215 : 7 Pat 205 : 9 PLT 92 : 107 IC 817 : 10 AI Cr R 12 : 29 Cr LJ 297.

——Obligatory on the Court.

The effect of the amendment of S. 162 is to make it obligatory on the Court to give the accused copies of the statements subject only to the exclusion of irrelevant matters which the public interest requires should not be disclosed. (Chotzner and Duval, JJ.) Modari Sikdar v. Emperor.

AIR 1927 Cal 514 : 54 Cal 307 : 102 IC 550 : 8 AI Cr R 112 : 28 Cr LJ 582.

——A Magistrate is not justified in referring to the statements made in the police diaries unless and until the witnesses have been confronted by those statements. (Harrison, J.) Municipal Committee, Simla v. Mukand Singh.

AIR 1926 Lah 365 : 94 IC 271 : 27 Cr LJ 607.

——S. 162 (1)—Statement made to the Police — Reference to.

It is obligatory on the Court to refer to the statement made to the Police by the witness who is being examined, when so requested by the accused and only after such reference, the Court may give a copy to the accused. While the evidence of the witness is in progress, the copy can be of any use to the accused, to indicate points on which the witness should be examined and the object of the section would be defeated if the Court would postpone the reference to the statement till the evidence of the witness is complete. (Martineau and Chevis, JJ.) Sultan v. Emperor.

AIR 1921 Lah 93 : 62 IC 818 : 22 Cr LJ 578.

(The court is bound to grant copies under the new section.)

——Statements in special diary—Grant of copies to accused.

The accused applied for the production of the statements made by certain prosecution witnesses to the police during investigation and entered in the special diary. The Magistrate then ordered the police to produce the statements of those witnesses, but passed the following order: "The statements in no way contradict the evidence given and I return them". The Magistrate convicted the accused and the order was confirmed in appeal by the Sessions Judge. Held, that the Sessions Judge, who upheld the conviction, ought to send for and consider the statements of the witnesses, and, if he found that there was anything in them, upon which the petitioner would be advantaged by being allowed to cross-examine, he should also re-summon the witnesses and submit them for cross-examination, after supply-

CRIMINAL P. C. (V of 1898), S. 162 — 21. Grant of copies of statements—(c) Duty of the Court ing copies of their statements to the accused. (Holmwood and Ryves, JJ.) Salt v. Emperor.

36 C 560 : 2 Ind Cas 591 : 10 Cr LJ 88.

21. Grant of copies of statements—

(d) Refusal to grant copies.

——Duty of Court to grant copies.

The important fact which makes S. 162 applicable is that the statement is recorded by the police officer in the course of an investigation under Ch. XIV of the Code. Copy of the statement of the witness to the police cannot be refused to the accused on the ground that the case is enquired into by the Court on complaint and is not challaned by the police. (Bapna, J.) Bakhtawar Singh v. State.

AIR 1951 Raj 145 : 1951 RLW 186 : ILR (1951) 1 Raj 178 : 52 Cr LJ 1183.

——Mere gist of statements of witnesses recorded—Right of accused to copies of such statements cannot be denied whether they can or cannot be used in cross-examination — Evidence Act (1872), S. 145. (Harries C. J. and Bachawat J.) Bejoy Chand Patra v. The State.

AIR 1950 Cal 363 : 54 CWN 447 : 51 Cr LJ 1307.

——Statement recorded in form of memorandum—Conclusions noted in the diary.

For purposes of S. 162, it is immaterial whether the statement is recorded in the actual words of the witness and it is sufficient if it is written in the diary merely in the form of a memorandum. At the same time, the section only applies to the statement of a witness which has been reduced to writing and the Court can refuse the copy of an abstract of the statements of several witnesses prepared in such a way that it was not clear what each witness was supposed to have said. Similarly, the defence would not ordinarily be entitled to a copy of an entry in the diary which merely summarised the conclusions at which the investigating officer had arrived after examining a particular witness. (Edgley and Roxburgh, JJ.) Emperor v. Ajit Kumar Ghosh.

AIR 1945 Cal 159 : 18 RC 122 : 220 IC 237 : 78 Cal LJ 217 : 46 Cr LJ 692.

——(as amended in 1923)—Contradiction, if material.

Amended S. 162 is mandatory and a Court cannot refuse an application for copies unless the case fell under Proviso 2, sub-s. (1). The Court should not look into the Police diaries for finding out whether or not there are any contradictions to the statement made in Court before granting copies. (Munje, A. J. C.) Murtiza Khan v. Emperor.

AIR 1934 Nag 138 : 1934 Cr C 569.

——If barred by S. 172.

What is intended to be recorded under S. 172, Criminal P. C., and what is safeguarded by the provisions of that section are the activities and conduct of the investigating officer, the sources of his information and his own enquiries and observations. That section in no way prevents copies of statements of the witnesses being given whether in extenso or in the form of compressed memoranda. The refusal to grant copies of such memoranda in compliance with S. 162 vitiates conviction. (Grille, A. J. C.) Hamidkhan v. Emperor.

AIR 1933 Nag 4 : 28 NLR 291 : Ind Rul (1933) Nag 15 : 140 IC 825 : 34 Cr LJ 127.

——Ss. 162, 202 — Report of Police under S. 202—Accused's right to copy.

The report of the Police under S. 202, Criminal P. C., is part of the record and there is no reason to refuse a copy of the same to the accused. (Jackson, J.) Mutnukumara Pillai v. Emperor.

AIR 1931 Mad 429 : 1931 MWN 325 : 33 LW 570 : Ind Rul (1931) Mad 510 : 131 IC 174 : 32 Cr LJ 689.

——Statements not recorded in full — Accused's right to copies — Omission to supply copies — Effect.

The fact that the Police had not recorded the statements of the prosecution witnesses in full but had only made a memorandum of them is not a sufficient reason for refusing copies of those statements to the accused under S. 162, Criminal P. C.

Omission to supply copies of statements made by prosecution witnesses to the Police, as required by S. 162, Criminal P. C., is an illegality sufficient to vitiate the proceedings. (Kendall, J.) Emperor v. Bansidhar

AIR 1931 All 262 : 53 All 458 : 1931 ALJ 157 : Ind Rul (1931) All 289 : 130 IC 625 : 32 Cr LJ 562.

——Absence of contradiction—Discretion to refuse.

Under S. 132, Criminal P. C., a Magistrate has no discretion to refuse to grant a copy of the statement made by a prosecution witness to the Police, on the ground that, in his opinion, no contradiction was established. The only discretion given to him is to exclude any part of such statement if he is of opinion that its disclosure is not essential in the interests of justice and is inexpedient in the public interest. (Bennet, J.) Nek Ram v. Emperor.

AIR 1931 All 273 : Ind Rul (1931) All 139 : 129 IC 267 : 32 Cr LJ 370.

——Magistrate's opinion as to contradiction immaterial.

The copy of statement of a witness before police can only be refused, if the statement or statements contained therein are not relevant or their disclosure is not essential in the interests of justice or expedient to the public interests. The mere fact that the statement of the witness before the police does not in the opinion of the trying Magistrate contradict the evidence of the witness in the Court is no reason for refusing to grant the copy.

CRIMINAL P. C. (V of 1898), S. 162 — 21. Grant of copies of statements—(d) Refusal to grant copies (Rupchand and Wild, A. J. Cs.) Umar v. Emperor

AIR 1930 Sind 153 : 1930 Cr C 617 : 123 IC 689 : 31 Cr LJ 592.

——Reason for refusal.

When witnesses for the prosecution M and J were examined the accused's counsel asked for copies of the statements made by those witnesses to the police. On referring to the police diaries, the Court found that the statement of J was recorded jointly with another prosecution witness who was tendered for cross-examination but was not cross-examined.

Held, that the Court in the circumstances could refuse to supply a copy of the statement made to the police. Lah Cr App 1095 of 1924, Rel. on. (Zafar Ali and Johnstone, JJ.) Banta Singh v. Emperor.

AIR 1930 Lah 457 : 122 IC 491 : 1930 Cr C 561 : 31 Cr LJ 444.

——Court's opinion as to contradiction immaterial.

The Court cannot refuse to grant copies to the accused of the statements of prosecution witness, which have been previously reduced to writing, because on a perusal thereof it considers that there is no contradiction of the depositions recorded in Court. Although the statement previously recorded into writing may only be used to contradict a witness, the Court cannot, on that ground, refuse to grant a copy because there is apparently no contradiction. AIR 1928 Pat 215, Ref. (Staples, A. J. C.) K. Fasiuddin v. Emperor.

AIR 1929 Nag 172 : 1929 Cr C 47 : 117 IC 213 : 30 Cr LJ 728.

——Non-examination of witness — Refusal — Proper.

Where a witness was tendered by the prosecution but was discharged without being examined or cross-examined.

Held, that the application to furnish the accused with a copy of the statement made to the police by the witness was rightly refused. (Jwala Prasad and Ross, JJ.) Wajid Ali v. Emperor.

AIR 1929 Pat 34 : 7 Pat 153 : 10 PLT 297 : 114 IC 220 : 30 Cr LJ 273.

——Refusal — Procedure.

Where the lower Court wrongly refuses to furnish a copy of prior statement of a witness, the proper course in appeal is that counsel should be furnished with a copy of the statement and any contradictions between that statement and those made in Court by the witness should be taken as left unexplained by him. Each case must be decided on its own facts and the extent of the prejudice to the accused in each case must determine whether the trial should be held altogether vitiated or whether the defect can be remedied by following the procedure indicated above. AIR 1927 Cal 644 and AIR 1927 Nag 24, Cons. (Harrison and Dalip Singh, JJ.) Azara Singh v. Emperor.

CRIMINAL P. C. (V of 1898), S. 162 — 21. Grant of copies of statements—(d) Refusal to grant copies

AIR 1928 Lah 257 : 9 Lah 389 : 108 IC 167 : 9 AI Cr R 559 : 29 Cr LJ 348.

——Opinion of Court immaterial.

The provisions of S. 162 are imperative. The Court shall, on the request of the accused, direct that the accused be furnished with a copy. A refusal to grant copies can only be made if the requirements of the second proviso to S. 162 are satisfied, namely if the Court is of opinion that any part of any such statement is not relevant to the subject-matter of the inquiry or trial or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interests. The application for copies should not be refused on the mere ground that it might not help the defence or that possibly there was no contradiction. (Sen, J.) Chedi Prasad Singh v. Emperor.

AIR 1927 Pat 325 : 8 PLT 613 : 102 IC 773 : 8 AI Cr R 271 : 28 Cr LJ 597.

22. Procedure for contradicting a witness.

——S. 162, Proviso — Contradicting witness — Procedure.

The Judge should not exhibit the whole statement; he should exhibit only the particular portion which contradicted the deposition given in Court.

Where the Judge allowed the witness to be put question after question regarding what he had, or had not, stated to the investigating officer and recorded the answers and at one place he had made a note that a particular statement said by the witness to have been made was not there:

Held that this was not the proper way of contradicting the witness. The particular part of the statement which contradicted the deposition of the witness ought to have been read over to the witness and exhibited. (Desai J. on difference of opinion between Agarwala and Gurtu, JJ.) Birey Singh v. State.

AIR 1953 All 785 : 1953 Cr LJ 1817.

——S. 162 — Statement under — Use of.

The statement under S. 162 can be used only to contradict the witness and before the witness can be contradicted, his attention ought to be drawn to the contradictory portion of the statement as required under S. 145, Evidence Act. Failure of the Court to do so is fatal to the availability of the statement for the purpose of contradicting the deposition. (Desai J. on difference of opinion between Agarwala and Gurtu JJ.) Birey Singh v. State.

AIR 1953 All 785 : 1953 Cr LJ 1817.

——Contradicting witness under the section — Procedure.

Reading S. 162 of the Code and S. 145, Evidence Act together, the proper way of contradicting the witness is by drawing his attention to the parti-

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cular assertion or sentence in the statement under S. 162 by reading it over and not by reading over the entire statement. Naturally, if it is not possible for the cross-examining counsel to point to any particular sentence or assertion in the statement as contradicting the deposition in the Court, he cannot draw the witness's attention to any sentence or assertion.

When the particular sentence or assertion in the statement under S. 162 is put before the witness, it must be marked by being underlined or enclosed in a circle and exhibited. The entire statement should never be exhibited; it is not admissible in evidence and has not been brought to the notice of the witness. If the witness admits having made that assertion or spoken that sentence, the assertion or sentence is proved also and nothing further remains to be done; if he denies or does not remember having made the assertion or spoken the sentence, the station officer will have to be called to prove that he made or spoke it. This will be done by asking him whether the witness made the assertion or spoke the sentence bearing exhibit number so and so. This is the right way of proceeding to contradict a witness. (Raghubar Dayal and Desai, JJ.) Ram Bali v. State.

AIR 1952 All 289 : 1952 Cr LJ 600.

——Use of previous statement to contradict witness —Evidence Act (1872) S. 145.

A previous statement in writing cannot be used to contradict a witness unless that witness has had an opportunity of dealing with the statement and explaining it away if possible. (Harries C. J. and Bachawat J.) Bojoy Chand Patra v. The State.

AIR 1950 Cal 363 : 54 CWN 447 : 51 Cr LJ 1307.

——Contradicting witness under section — Procedure.

Where either the prosecution or the defence seek to contradict a witness or impeach his credit in pursuance of the provisions of S. 162, without at first proving statement under S. 162 the witness may be cross-examined on the lines indicated in S. 145, Evidence Act. The attention of the witness must be called to those parts of his statement to the police which are to be used for the purpose of contradicting him. Then, and then only, the copy of the recorded statement can be proved, by examining the police officer. (U Bo Gyi J.) Kyin Hoke v. Union of Burma.

1949 Bur LR (HC) 154.

——Statement on oath in Court contradictory to previous statement before police, reduced to writing—Proper direction to jury—Evidence Act (1 of 1872), S. 145.

The well-known provisions of S. 162 afford to the accused an opportunity of showing that the statements made by the witnesses at the trial are opposed to statements which the same witnesses actually made to the police at an earlier stage during investigation. Under S. 145, Evidence Act, the evidence of a witness at the trial may be shown to be inconsistent with the previous statements, and the method by which this may be done is by producing previous statements of the witness which have been reduced to writing and which are contradictory of the witness's statements made in the Court. The whole foundation of this procedure is the principle that a witness who makes inconsistent statements is unreliable. If a Judge says to a jury that the previous statements of the witness are not necessarily true and may possibly be false and leaves at that, the object of the first proviso to S. 162, Criminal P. C., is largely defeated. Such a direction has the effect of creating in the minds of a jury the impression that the previous statements of the witnesses made to the police are of such a character as not to be of any real importance. Once the jury takes that view then the purpose of contradicting a witness in the manner provided by S. 145, Evidence Act, by his previous statements made to the police and reduced to writing is largely frustrated. The correct position in regard to the veridical considerations which arise in connection with previous statements to a police officer, which have been reduced to writing and to which the provisions of S. 162 of the Code apply, is to tell the jury in no uncertain terms that the witness is unreliable and that they would be well advised to ignore his evidence. If the witness is proved to have made a statement though unsworn, in distinct conflict with his evidence on oath, the proper direction to the jury is that his testimony is negligible and that their verdict should be based on the rest of the evidence. (Khundkar and Ellis, JJ.) Fazlur Rahman v. Emperor.

AIR 1947 Cal 192 : 1946 Cal (Rul) 335 : 226 IC 33 : 47 Cr LJ 814.

——Statement made to Police during investigation — How far admissible.

A Court should not take any notice of a previous statement made by a witness which is in contradiction of the statement which he or she makes before that Court unless the previous statement alleged to be contradictory is put to the witness for admission or denial and he or she is given an opportunity of offering an explanation of how it is that on a previous occasion, he or she made this contradictory statement. It may well be that statements apparently contradictory are reconcilable and the witness must be given an opportunity to reconcile them if such reconciliation is possible. Section 145, Evidence Act, clearly indicates the correct procedure. It is not sufficient to ask a witness whether he did or did not make a certain statement to the Sub-Inspector unless the witness in answer to that question admits that he made such a statement.

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In that case, if the statement is contradictory of something else which the witness had said, it is the duty of the cross-examiner to give the witness an opportunity of reconciling his statement. But if the cross-examiner does not do so, the counsel for the prosecution may, on re-examination, give that opportunity or the Court itself should do so. If the witness admits having made that statement, the most convenient method for the Court is to include the actual words found in the diary as part of the admission which has to be recorded. If the witness denies having made such a statement, the actual words which are to be subsequently proved must be shown to the witness and the passage which will ultimately have to be proved should be marked and given a number. When, in due course, the Sub-Inspector is called as a witness, he may be asked to refer to his diary, compare the statement recorded there with the copy and prove that the statement which has been put to the witness was made by that witness in the course of the investigation. If this procedure is not followed, contradictory statements in a diary cannot be referred to in argument by counsel or relied upon by a Court. (Yorke, J.) Iqbal Ahmad v. Emperor.

AIR 1943 All 49 : 1942 ALJ 637 : 1942 AWR 379 : 15 RA 347 : 204 IC 495 : 44 Cr LJ 280.

——Evidence Act, S. 145 — Statement in Police diary — How to be used for contradiction of witness — Strict compliance.

Where it is intended to contradict a witness by a previous statement reduced to writing, the procedure laid down in S. 145, Evidence Act, must be observed. What is intended by that section is that a witness should be informed of the part of his statement which is to be used to contradict him and he should be given an opportunity of explaining what he meant by that portion of his statement. (Bennet, J.) Raghuraj Singh v. Emperor.

AIR 1934 All 956 : 7 RA 406 (2) : 4 AWR 1 : 152 IC 873 : 36 Cr LJ 188.

——Contradictory statement by witness made to Police — Proper procedure — Evidence Act, S. 145.

If in a criminal case, the defence desires to contradict a witness by his statement recorded in the Police diary, the proper procedure is to proceed in the manner laid down in S. 162, Criminal P. C., i.e., to apply for copy of the statement of the witness in the diary and cross-examine the witness to that effect under S. 145, Evidence Act. But if the defence endeavours to establish that there was such contradiction by asking the witness at the end of the cross-examination whether he made the statement to the Police, the question is not admissible. (Bennet and Bajpai, JJ.) Ram Bharosey v. Emperor.

148 IC 913 : 6 RA 821 : 35 Cr LJ 762.

CRIMINAL P. C. (V of 1898), S. 162—22. Procedure for contradicting a witness

——Exclusion of hearsay evidence of Police Officer —Contradiction of witness — Procedure.

The object of S. 162, Criminal P. C., is plainly to exclude altogether the hearsay evidence of Police Officers except for the purpose of contradicting a witness in the manner provided by S. 145, Evidence Act, and if the exception thus made is to be applied, it must be applied in the manner provided in the section. When it is sought to contradict a witness for the prosecution by reference to a previous statement recorded by the Police, it is essential that the attention of the witness should first be drawn to the alleged discrepancy by showing or reading to him the record of the statement, and affording him an opportunity to explain it. When this has been done, the written record of the statement must be proved before the discrepancy, if any, can be relied upon as a contradiction. (Agarwala and Rowland, JJ.) Emperor v. Najibuddin.

AIR 1933 Pat 589 : 14 PLT 543 : 6 RP 339 : 147 IC 142 : 35 Cr LJ 379.

——Mode of proof — Discrepancies and omissions.

In applying the provisions of S. 162, Chiminal P. C,. if the witness when asked if he made the statement actually recorded by the Police replies in the affirmative, the record of the statement need not be proved and the cross-examiner may, if he so chooses, leave it to the party who called the witness to have the discrepancy, if any, explained in the course of re-examination. If, on the other hand, the witness denies having made the previous statement attributed to him or states that he does not remember having made any such statement and it is desired to contradict him by the record of the previous statement, the cross-examiner must put to the witness the relevant portion or portions of the record which are alleged to be contrary to his statement in Court and thus give him an opportunity to reconcile the same if he can. When the cross-examiner has done so the previous statement becomes admissible for the purpose of contradiction and may be proved. (Coldstream and Jailal, JJ.) Mohinder Singh v. Emperor.

AIR 1932 Lah 103 : Ind Rul (1932) Lah 81 : 33 PLR 891 : 135 IC 209 : 33 Cr LJ 97.

——Contradiction of witness by omissions in statement to Police—Procedure—Practice of Bengal and Lahore compared.

The procedure followed in Bengal in contradicting a witness by an omission in his statement to the Police is as follows: After the attention of the prosecution witnesses has been drawn to the contradictory statement made by them before the Police, the Investigating Police Officer is asked whether those witnesses did or did not make the particular statements before him. The answer given by the Police Officer (which is always checked with reference to what is written in the diaries)

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is considered quite sufficient to contradict the witnesses, and neither the original record of that statement in the Police diary nor the copy of it furnished to the accused is ever proved or admitted in evidence. This procedure is on the whole more satisfactory as well as convenient than the practice followed by the Lahore High Court. (Fazl Ali and James, JJ.) Bihari Mahton v. Emperor.

AIR 1931 Pat 152 : 10 Pat 107 : 12 PLT 798 : Ind Rul (1931) Pat 241 : 131 IC 801 : 32 Cr LJ 797.

——Only relevant portions evidence in the case.

Only those portions of statements made by witnesses before the police as have been actually used under S. 162, Cr. P. Code, to contradict the witnesses in the manner provided in S. 145, Evidence Act, in the course of their cross-examination or re-examination are parts of the judicial record and can be treated as evidence in a case. The other parts of the statement cannot be relied upon by the prosecution or the defence in determining the guilt or innocence of the accused and should not be referred to by the Judge. (Tek Chand and Agha Haider, JJ.) Mt. Sahai v. Emperor.

AIR 1930 Lah 449 : 121 IC 66 : 1930 Cr C 553 : 31 Cr LJ 199.

——The combined effect of the first two paragraphs of S. 162 is that when a witness for the prosecution is being examined, if an accused has reason to believe that the statement which the witness is making in Court differs from the statement which he made to the police, then the accused or his advocate may ask the Court to refer to the record of any statement made by the witness to the police and, if it be found that there is any variation between the two statements, the defence is entitled to a copy of the record of the statement made to the police. The copy must then be proved, and the witness may be cross-examined on that statement under S. 145, Evidence Act, and his attention must be drawn to the particular points in which his statement in Court differs from the record of his statement to the police. (Heald and Baguley, JJ.) Bana Singh v. Emperor.

AIR 1928 Rang 150 : 6 Rang 137 : 10 AICr R 403 : 110 IC 333 : 29 Cr LJ 701.

——For contradiction.

A copy of the statement made before the police cannot be used against the witness till he has been confronted with it. The right procedure, when a prosecution witness is contradicting himself, is to ask the Judge to look into the diary and decide whether the accused person should not have a copy of the statement. If such copy be granted, the witness's attention must be called to the same. AIR 1915 P. C. 7 Ref. (Mears, C. J. and Mukerji, J.) Kashiram v. Emperor.

AIR 1928 All 280 : 109 IC 120 : 9 LRA Cr 30 : 9 AICr R 249 : 26 ALJ 139 : 29 Cr LJ 472.

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——Mode.

The only way a witness can be contradicted by statements made to the police under the provisions of S. 162, Cr. P. Code, is to prove his written statement and put it to the witness under S. 145, Indian Evidence Act, to permit him to explain the contradictions, if any. Statements made to the police cannot be used at a trial in any other way. (Addison and Skemp, JJ.) Emperor v. Ibrahim.

AIR 1928 Lah 17 : 8 Lah 605 : 28 PLR 649 : 105 IC 807 : 9 AICr R 132 : 28 Cr LJ 983.

——Procedure prescribed by S. 162 must be followed in admitting statements made to police officer during investigation and if the accused or his advocate does not ask the Court to refer to such statements they cannot be admitted. (Heald and Chari, JJ.) Nga Po Chon v. King-Emperor.

AIR 1927 Rang 80 : 4 Rang 356 : 98 IC 491 : 27 Cr LJ 1371.

23. "Statement if duly proved."

——S. 162, Proviso — Statement of witness to police — When can be used to contradict a witness.

There is no presumption as to the genuineness of the statements of the witnesses entered in the police diary and, unless they are duly proved, they cannot be used to contradict the evidence given in Court. (Verma C. J. and Nawal Kishore, J.) Balia v. Sarkar.

AIR 1950 Raj 16 : 51 Cr LJ 1077.

——Failure to examine Police Officer.

If the Police Sub-Inspector recording the statements of the prosecution witnesses is not examined by the prosecution the statements made by the witnesses during investigation and put to them in cross-examination cannot be proved. (S. K. Das, J.) Nur Dewan v. The State.

AIR 1950 Pat 549.

——Statements by witnesses to police during investigation—Admissibility.

Statements made by witnesses to the police during investigation cannot legally be admitted in evidence unless the investigating police officer is actually put into the witness-box and is invited to give evidence thereon. (Blank and Ellis, JJ.) Rased Molla v. Emperor.

AIR 1948 Cal 102 : 230 IC 163 : 48 Cr LJ 561.

——Statements of witnesses used under S. 162 — Proof of.

While proving statements of witnesses which are used under S. 162 it is necessary that the actual statement of the deponent must be accurately brought on record. Hence when a police officer is giving evidence with reference to such statements, his answers should always be checked with what is written in the diaries: AIR 1931 Pat 152, Rel. on; AIR 1933 Pat 589, Ref. (Das and Dalziel JJ.) Emperor v. Ramkripal Choudhary.

AIR 1947 Pat 398 : 25 Pat 825.

CRIMINAL P. C. (V of 1898), S. 162—23. "Statement if duly proved"

——Repudiation of portion — Duty of Court.

When a witness is confronted with a portion of his Police statement which he repudiates, the Police Officer recording his statement should be questioned specifically with regard to that portion of the statement. The practice of merely asking the Police Officer perfunctorily whether a particular document represents the witness's statement as a whole should be condemned. It is the obvious duty of the Judge to apply his mind to the question whether he is satisfied that the denial is to be rejected. (Young C. J. and Blacker, J.) Emperor v. Jiwan Das Milawa Ram.

AIR 1939 Lah 521 : ILR (1939) Lah 305 : 12 RL 293 : 185 IC 380 : 41 Cr LJ 174.

——Conditions necessary.

Under S. 162, Criminal P. C., the statement of a witness in evidence can only be contradicted by his alleged statement to the Police on two conditions; one is that the application for contradiction is made by the accused, and the other is that the statement of the Police should be proved by a certified copy of the diary. (Bennet, J.) W. K. Wesley v. Emperor.

AIR 1938 All 571 : 11 RA 276 : 1938 AWR 505 : 178 IC 183 : 40 Cr LJ 4.

——Statement in investigation other than that resulting in trial in which that statement is sought to be used—Proof of statement.

The provisions of S. 162, Criminal P. C., do not apply to statements made in an investigation other than that which results in a trial in which those statements are sought to be used; and even in a case where the provisions of S. 162, Criminal P. C., do apply, those parts of the statement to the Police which are used in cross-examination to contradict the witness must be proved and brought on to the record. This can ordinarily be done by the admission of the witness that he made the statement, or by examination of the Police Officer who recorded it. If the latter course is necessary, in order to avoid delay, there can be no objection to allowing cross-examination subject to subsequent proof of the statement. Formal proof prior to the cross-examination of the witness on his previous statements is, therefore, unnecessary. If the statement, if not admitted, is subsequently not proved, the evidence based on it must, of course, be disregarded. This principle applies whether the provisions of S. 162, Criminal P. C., are applicable to the statement sought to be proved or not.

The use of the statement of the accused, in a complaint subsequently made by him under S. 211, Penal Code, as of that made by any other person who made a statement during the investigation, is governed by the provisions of the

CRIMINAL P. C. (V of 1898), S. 162—23. "Statement if duly proved"

Evidence Act, and not by S. 162, Criminal P. C. (Grille, J.) Shivlal v. Emperor.

AIR 1938 Nag 110 : 10 RN 169 : 20 NLJ 280 : ILR (1940) Nag 320 : 172 IC 156 : 39 Cr LJ 68.

——For corroboration.

Statements made by a witness to the Police in the course of the investigation of a case can never be used to corroborate the witness's evidence; and, if the written record of what a prosecution witness has said to the Police is to be used to contradict him under S. 162, Criminal P. C., it must be proved and used in accordance with the provisions of S. 145, Evidence Act. (Beasley, C. J. and Reilly, J.) Narayana v. Emperor.

AIR 1933 Mad 233 : 56 M 231 : 64 MLJ 88 : 37 LW 220 : 1932 MWN 801 : Ind Rul (1933) Mad 261 : 143 IC 46 : 34 Cr LJ 481.

——Mode of proof.

In proving the statement, the provisions of S. 136, Evidence Act, may be taken advantage of so as to allow the fact that the copy of the statement is a true copy to be proved after the discrepancy has been proved. (Coldstream and Jailal, JJ.) Mohinder Singh v. Emperor.

AIR 1932 Lah 103 : Ind Rul (1932) Lah 81 : 33 PLR 891 : 135 IC 209 : 33 Cr LJ 97.

——Statements before Police not properly proved —Such statements used to discredit the witness:

Held, that the procedure was illegal. (Lort-Williams and S. K. Ghose, JJ.) Rahijaddi v. Emperor.

AIR 1931 Cal 189 : 35 CWN 317 : Ind Rul (1931) Cal 543 : 58 Cal 1009 : 132 IC 159 : 32 Cr LJ 841.

——Mode.

Under S. 162 a statement made before the investigating officer can be used for the purpose of contradicting such witness when produced at the trial but after strict compliance with the provisions of S. 145, Evidence Act. If the witness admits to have made the statement the previous statement in writing need not be proved. If he denies to have made any such statement and it is intended to contradict him the relevant portions of the record contrary to his statement in Court must be read to him and the witness should be given the opportunity to reconcile the same. It is only after this is done that the record of the previous statement becomes admissible in evidence for the purpose of contradicting the witness and can then be proved in any manner provided by law. (Jai Lal and Bhide, JJ.) Gopi Chand v. Emperor.

AIR 1930 Lah 491 : 126 IC 573 : 11 Lah 460 : 31 PLR 797 : 1930 Cr C 603 : 31 Cr LJ 1071.

——Under S. 162, the entries made in the police diaries can be used only for the limited purpose of contradicting the evidence of the witnesses for the prosecution and only when such entries have been duly proved. References by a Magistrate to

CRIMINAL P. C. (V of 1898), S. 162—23. "Statement if duly proved"

police proceedings cannot be justified even under S. 172. (Shadi Lal, C. J. and Agha Haidar, J.) Emperor v. Ram Rang.

AIR 1928 Lah 820 : 10 AI Cr R 230 : 109 IC 221 : 29 Cr LJ 493.

——Mode.

It is only what is written in the police diaries that can be used under S. 145, Evidence Act, to contradict the witness, and what the Police officer stated that a witness said or did not say, is inadmissible. The way to prove those portions of the written statement of a witness which have been specifically put to him in order to contradict him is for the accused to mark the passage or passages in the copy from the police diaries given to him and then to ask the writer of the statement to say that it is a true copy. (Addison and Coldstream, JJ.) Dharam Singh v. Emperor.

AIR 1928 Lah 507 : 9 AI Cr R 567 : 108 IC 162 : 29 Cr LJ 343.

——Necessity of.

Reference by a magistrate to statements made by a witness before the police with a view of contradict prosecution witness is entirely erroneous when the statements were not given to the accused persons on trial and no attempt was made to prove them. (Broadway and Zafar Ali, JJ.) Emperor v. Ahmad.

AIR 1928 Lah 144 : 9 AI Cr R 346 : 106 IC 350 : 29 Cr LJ 14.

——Due proof is essential.

There is no presumption as to the genuineness of the statements of witnesses entered in the police diaries, and unless they are duly proved the evidence given in Court cannot be contradicted by them. (Martineau and Campbell, JJ.) Laba Singh v. Crown.

AIR 1925 Lah 337 : 6 Lah 24 : 26 PLR 139 : 88 IC 513 : 26 Cr LJ 1153.

——Necessary prior to admission.

The words "if duly proved" in S. 162 clearly show that the record of the statement cannot be admitted in evidence straightway but that the officer before whom the statement was made should ordinarily be examined as to any alleged statement or omitted statement that is relied upon by the accused for the purpose of contradicting the witness ; and the provisions of S. 67 of the Evidence Act apply to this case as well as to any other similar case. If the particular police-officer who recorded the statement is not available, other means of proving the statement may be availed of, e.g., evidence that the statement is in the hand-writing of that particular officer. (Shah, Ag. C. J. and Fawcett, J.) King-Emperor v. Vittu Balu.

AIR 1924 Bom 510 : 26 Bom LR 965 : 83 IC 1007 : 26 Cr LJ 223.

——Statement of police—Proof of.

CRIMINAL P. C. (V of 1898), S. 162—23. "Statement if duly proved"

S. 162 of the Code forbids the obtaining of signatures to a statement taken down in writing by the Police. It can, however, be proved in evidence provided it is otherwise relevant. The Police cannot evade the provision of the section by recording as the first information a report of statement obtained after commencement of the investigation. (Mittra, A. J. C.) Ajodhi v. Emperor.

AIR 1920 Nag 170 : 16 NLR 30 : 56 IC 582 : 21 Cr LJ 486.

(No longer good law.)

——Written notes of statements to Police—When can be used as evidence against accused.

Written notes of statements made by witnesses to the Police cannot be used to discredit without the Police Officer who recorded them being called as a witness to prove these statements. (Pratt, J. C., and Crouch, A. J. C.) Achar v. Pirushah.

7 SLR 10 : 20 IC 597 : 14 Cr LJ 437.

——Oral evidence of statements to Police—Admissibility.

Statements to a Police Officer in the course of an investigation and taken down in writing may be proved by oral evidence. (Benson, Wallis, Miller, Abdur Rahim and Sundara Iyer, JJ.) Muthukumaraswami Pillai v. Emperor.

35 Mad 397 : (1912) MWN 549 : 12 MLT 1 : 14 IC 896 : 13 Cr LJ 352 (FB).

24. Re-examination.

——Statement to police — Use of by prosecution to contradict witness — Evidence Act (1872), S. 154.

Under S. 162 it is only the privilege of the accused to refer to the statement of a prosecution witness recorded by the Police, and use it for contradicting him in the manner provided by S. 154, Evidence Act. The prosecution, after a witness has been confronted with his Police statement by the accused, can use the above statement in the re-examination of such witness for the purpose only of explaining any matter referred to in his cross-examination. The prosecution has no right whatsoever to prove the statement of the witness recorded by the Police or use it to contradict its own witness or the witness produced by the defence. In this respect S. 154, Evidence Act, must be taken to be subject to the provisions of S. 162, Cr. P. C. (Mohd. Shafi, J.) Awal Din v. The Crown.

52 Cr LJ 354 (Pesh).

——Cross-examination of investigating officer as to statement previously made to him by prosecution witnesses—Duty of Court in the matter — Negative answer of investigating officer should not create wrong impression of what witnesses had stated before Police.

Per Mohammad Noor, J.—It is desirable that when an investigating Police Officer is being

CRIMINAL P. C. (V of 1898), S. 162 — 24. Re-examination

cross-examined as to previous statement made to him by the witnesses for the prosecution, the Court should have the Police diary before it and see whether the negative answer of the officer really gives a picture of what the witness in fact had stated. If not, the fact should be borne in mind and the Court should watch whether the matter is cleared up in re-examination. It is, therefore, the duty of the Public Prosecutor to see that the negative answer from an investigating officer in respect of the statement of a witness does not create a wrong impression of what the witness stated before the Police. He must, in these cases, bring about other statements to explain the matter referred to in cross-examination. If the Public Prosecutor fails to do so, it is the duty of the Court in fairness to the case and to the witness to bring about facts which will clear up the negative answer. This will be legitimate use of the Police diary and one of the modes of taking aid from it in the trial. (Mohammad Noor and Rowland, JJ.) Rusuf Mia v. Emperor.

AIR 1938 Pat 579 : 5 BR 185 : 11 RP 312 : 20 PLT 51 : 178 IC 934 : 40 Cr LJ 147.

25. "Whether in a police-diary or otherwise".

——Mala fide conduct of investigating officer — Proof by statement recorded under S. 162.

The truth of the statements recorded in the police diary is certainly not accepted or presumed, but the correctness of the record is presumed for the purposes of S. 162, Cr. P. C. The Court has, therefore, to accept that what is recorded in the case diary was the statement made by that particular witness before the investigating officer and a mere denial of a witness or the extreme improbability of a witness having made such a statement cannot be a factor in determining whether the police Sub Inspector was acting bona fide or not at the time when he recorded the statement. (Raghubar Dayal and Hari Shankar, JJ.) Sheo Shankar v. State.

AIR 1953 All 652 : 1953 All LJ 720 : 1953 All WR (HC) 264 : 1953 Cr LJ 1400.

——Zimnis — Accused cannot be convicted on facts noted therein by police officer—Zimnis cannot be used to the prejudice of accused person. (Teja Singh C. J. and Gurnam Singh, J.) State v. Hardial Singh.

AIR 1953 Pepsu 66 : 3 Pepsu LR 90 : 1953 Cr LJ 884.

——Police diary—Use of.

Under S. 162, the statement in the Police diary cannot be used as substantive evidence. (Mehta and Sanghi, JJ.) Zeta Narsingh v. State.

AIR 1952 Madh B. 79 : 1952 Cr LJ 700.

——Ss. 162, 172—Non-observance of rules of writing diaries — Statement of witness not coming in original form.

The accused and the Court are entitled to know whether between the witness's earliest statements before the police, and his evidence in Court there

CRIMINAL P. C. (V of 1898), S. 162—25. "Whether in a police-diary or otherwise"

are material contradictions. This becomes impossible if the Police officers fail to observe the rules for writing diaries. It is of no avail to say that the officer tested subsequently the witness's statements with reference to the diary, because the Court is concerned with the earliest statement. Where the earliest statement under S. 162 of a witness does not come in its original form, his evidence in Court should be checked up with great caution. (Krishnan, J. C.) Bhaiya Lal Singh v. State of Vindhya Pradesh.

AIR 1952 Vind Pra 7 : 1952 Cr LJ 143.

——It is not obligatory for investigating officer to produce all his rough notes and jottings out of which he writes up his diary. All that an accused is entitled to demand is that when a written record is kept of the statement of the witness to an investigating officer he shall be entitled to a copy of that record. AIR 1945 Nag 1, Ref.; AIR 1948 Mad 23, Explained. (Govindarajachari and Mack, JJ.) In re Subbaratnam.

AIR 1949 Mad 663 : 1949 MWN 17 : 1949-1 MLJ 152 : 50 Cr LJ 950.

——Ss. 162 and 172—Notes taken by investigating officer under S. 161 (3)—Production of.

Per Horwill J.—Where the notes taken by an investigating police officer, under S. 161 (3) give a very brief summary of the narrative found in the case diary prepared by him and do not take the form of summaries of individual statements made by the various witnesses, the investigating officer would be justified in objecting to the production of his notes. (Horwill and Bell, JJ.) Subba Reddi v. Emperor.

AIR 1948 Mad 23 : (1947) 1 MLJ 193 : 60 MLW 179 : 1947 MWN 209 : ILR (1948) Mad 57 : 48 Cr LJ 973.

——Zimnis — Use of — It must be in favour of and not against accused.

The use made of the zimnis must be confined to eliciting circumstances favourable to the accused, and the Judge should not allow himself to be influenced against an accused person by reference to the zimnis. (Tekchand and Sale, JJ.) Ghulam Mohammad v. Emperor.

AIR 1942 Lah 271 : 44 PLR 448 : 15 RL 230 : 203 IC 488 : 44 Cr LJ 77.

——An entry made in daily diary of thana by Police Officer before recording of the first information is inadmissible for any purpose being part of proceedings of police. (Tekchand and Ram Lall, JJ.) Ahman v. Emperor.

AIR 1938 Lah 787 : 40 PLR 697 : 11 RL 697 : 180 IC 507 : 40 Cr LJ 435.

——Police diary containing abstract statements of witnesses, ascertained as a result of questioning.

If a Police diary purported to be kept under S. 172, Criminal P. C., does not contain any statement by any witness, but contains only brief records of what the investigating officer saw when he arrived at the spot, and of information which

CRIMINAL P. C. (V of 1898), S. 162—25. "Whether in a police-diary or otherwise"

he ascertained as a result of questioning several people, the accused is not entitled to use it in the manner provided by S. 162. (Henderson and Khundkar, JJ.) Moborak Ali Shaik v. Emperor.

AIR 1939 Cal 252 : 68 CLJ 397 : 11 RC 693 : 180 IC 516 : 40 Cr LJ 386.

——Police diary — Statements in — Evidence in rebuttal of.

There is an initial presumption of accuracy in the case of official records, but in the case of the statements of witnesses recorded in Police diaries, the burden of rebutting it is not very heavy. Where the witness is a respectable educated man and quite disinterested and the difference between what he did say and what he is recorded as saying is very slight and could easily have been due to a misunderstanding by the Police Officer recording the statement, the Court may accept as correct his denial of the accuracy of the statement attributed to him by the Police Officer. (Blacker, J.) Radha Kishen v. Emperor.

AIR 1938 Lah 714 : 11 RL 642 : 179 IC 880 : 40 Cr LJ 261.

——Supervision notes by superior officer—Whether should be excluded from Police diaries sent to Court.

It is a mistake to exclude supervision notes from the police diaries sent to the Courts. The investigation may be (and usually is) in the hands of a Sub-Inspector and the supervision is conducted by superior officers. But the Court which may use the diaries to aid it in the inquiry or trial cannot rightly be left in ignorance of the supervision which necessarily determines the course of the investigation at point after point. Their exclusion is apt to lead to a miscarriage of justice, if not also to leave a suspicion that something must be wrong with the investigation which it is not desired should become known to the Court. The notes cannot, of course, be used as evidence, any more than can the diaries of the investigating officer himself; but they usually make these diaries more intelligible and more useful as aids in inquiries and trials. (Dhavle and Chatterji, JJ.) Emperor v. Manu Chik.

AIR 1938 Pat 290 : 4 BR 626 : 11 RP 11 : 175 IC 716 : 39 Cr LJ 635.

——Statements in Police diary.

Ordinarily, the statements in Police diary are privileged, and they cannot be given to anybody except under S. 162, and that too, is limited to the case of an accused who is being tried for an offence under investigation at the time when the statement was made. (Vivian Bose, A. J. C.) Jagannath Rao v. Emperor.

AIR 1935 Nag 23 : 1935 Cr C 111.

——Ss. 162, 172 — Alteration introduced in 1923 into S. 162—Effect of.

Per Ferrers, J. C.—It cannot be said that the alteration introduced in 1923, into S. 162 effected, by implication, so material a change in S. 172, that the interpretation of the latter section which had previously been laid down by authority is no longer good law. (O'Sullivan, A. J. C. on difference of opinion between Ferrers, J. C. and Rupchand, A. J. C.) Emperor v. Hari.

AIR 1935 Sind 145 : 28 SLR 397 : 157 IC 697 : 36 Cr LJ 1161 (2).

——Statements of witnesses taken down in writing, such as are referred to in S. 162, should not be entered in the special diary which should merely record the steps taken by the Police Officer in the investigation and the circumstances he comes to know by investigation. The diary may be used by the Court to help it in the inquiry or trial and it may be referred to by the Police Officer who kept the diary to refresh his memory. The accused can only use the diary if it is used by the Police Officer to refresh his memory, or if the Court uses it to contradict the Police Officer. (Courtney Terrell, C. J. and Adami, J.) Hafiz Mohamed v. Emperor.

AIR 1931 Pat 150 : 12 PLT 393 : 131 IC 17 : 32 Cr LJ 638.

——The object of amending S. 162 is that the police should no longer claim any privilege in respect of any statement on the ground that it is a statement recorded under S. 172. It is quite immaterial whether the statement is labelled as recorded under S. 172. (Cuming and Graham, JJ.) Mafizaddi v. Emperor.

AIR 1927 Cal 644 : 45 CLJ 561 : 31 CWN 940 : 104 IC 245 : 28 Cr LJ 805.

——Statement in diary.

Statements attested by the Sub-Inspector concerned, although recorded in his diary, are recorded under S. 162 and can be used for the purpose of contradicting witnesses in cross-examination. (Wazir Hasan and Pullan, JJ.) Jadunandan Brahman v. Emperor.

AIR 1927 Oudh 321 : 2 Luck 605 : 4 OWN 699 : 104 IC 242 : 28 Cr LJ 802.

——Evidence—Police diary may be used for accused.

Statements embodied in police diaries can be used in favour of an accused person, but not against him. (Zafur Ali, J.) Rajindar Singh v. Emperor.

AIR 1923 Lah 516 : 77 IC 489 : 25 Cr LJ 409.

——Court's duty— Evidence judicially recorded—Judge's duty to consider.

It is the duty of the Judge to make up his mind while the witness is before him whether he is a witness of truth or falsehood and it is only when the Judge sees any reason to distrust his evidence that omissions in a Police record can become of any importance. It is dangerous to appeal from evidence judicially recorded under the sanction of cross-examination to alleged statements made to police, which are not

CRIMINAL P. C. (V of 1898), S. 162—25. "Whether in a police-diary or otherwise"
judicially recorded. (Holmwood and Sharfuddin, JJ.) Jang Rai v. Emperor.

AIR 1915 Cal 702 : 28 IC 649 : 19 CWN 217 : 16 Cr LJ 313.

——Police diaries — Value of.

References to the Police diaries should be made under the section in the interest of the accused for checking the prosecution evidence and to see how far it is reliable. (Reid, C. J., and Rattigan, J.) Santa Singh v. Emperor.

171 PLR 1913 : 19 IC 190 : 15 PWR Cr 1913 : 14 Cr LJ 190.

——Entries in police diaries, admissibility.

See Penal Code (Act XLV of 1860) S. 411.

4 Cr LJ 176 (Lah).

26. Dying declarations.

——Scope—Sub-Inspector recording dying declaration of victim of robbery wounded during the perpetration of the offence and who subsequently died — Simultaneously with dying declaration, deceased's wife giving list of stolen property—List held did not come within prohibition under S. 162.

See ibid, S. 154.

AIR 1951 Him Pra 1 : 52 Cr LJ 50.

——Dying declarations— Evidentiary value —Evidence Act (1872), S. 32.

In considering the weight to be attached to dying declaration, it is necessary to bear in mind (1) the danger of perjury and the impossibility to ascertain the truth, (2) the danger of letting in incomplete statements, (3) that implicit reliance cannot be placed on dying declarations. (U Bo Gyi, J.) Kyin Hoke v. Union of Burma.

1949 Bur LR (HC) 154.

——Dying declaration — Questions put by Magistrate should be recorded verbatim— Omission — Effect.

It is desirable that a Magistrate recording a dying declaration, who has occasion to put any question to the deponent, should record that question and also the answer which he receives to it. The danger of omitting to take this precaution is that some leading question may be put to the deponent, and unless the Court which is eventually to decide to act or not to act on the dying declaration, has the question before it, it may not be in a position to judge how far the answer given was a spontaneous one or not. It is particularly necessary that the Magistrate should record any questions which he puts when he is himself acquainted with the facts of the case, and is endeavouring to extract information from the deponent.

Where, however, the Magistrate who knew nothing of what had taken place put questions and omitted to record the questions and answers separately while recording the dying declaration:

Held, that as it was not likely that the questions would have been leading questions, properly so-called, the evidentiary value of the declaration

CRIMINAL P. C. (V of 1898), S. 162 — 26. Dying declarations
was not detracted from. (Meredith and Shearer, JJ.) Rambira Missir v. Emperor.

AIR 1943 Pat 397 : 22 Pat 338 : 10 BR 168 : 16 RP 99 : 210 IC 210 : 45 Cr LJ 213.

27. Inadmissible statement admitted—Effect.

——Admission of evidence inadmissible by reason of S. 162.

Reception of evidence inadmissible owing to the provisions of S. 162 is not necessarily fatal and in an appeal the Court has to see whether the reception influenced the mind of the jury so seriously as to lead them to a conclusion which might have been different but for its reception. It must always be a question whether prejudice has been caused in such cases, and if not, whether the materials left are sufficient within the meaning of S. 167 of the Evidence Act. (Roxburgh and Ormond JJ.) Surendar Dinda v. Emperor.

AIR 1949 Cal 514 :ILR (1945) 2 Cal 513 : 48 Cr LJ 804.

——Use of police diary to prejudice of accused —Conviction cannot be maintained.

The Court would not be justified in using the police diary to the prejudice of the accused, even if the defence requests it to examine the diary. Where the Court peruses the diary it is impossible to avoid the conclusion that it has allowed its mind to be influenced by what it found in the diary and what was not before it. The conviction cannot be maintained in such a case. (Meredith and Imam JJ.) Sheikh Yusuf v. Emperor.

AIR 1946 Pat 127 : 1945 PWN 438 : 227 IC 625 : 13 BR 106.

——If can be used in trial to demolish defence case.

A statement made to a Police Officer during investigation cannot be used in respect of any trial of any offence under investigation at the time when such statement was made. Such a use is not warranted by the provisions of S. 162, Criminal P. C., and if such evidence is used to demolish the most important portion of the defence case, it must be held that its admission prejudiced the accused to such an extent that the verdict of the jury cannot be upheld. (Bartley and Henderson, JJ.) Ebrahim Mondal v. Emperor.

AIR 1939 Cal 330 : 12 RC 61 : 43 CWN 784 : 182 IC 405 : 40 Cr LJ 665.

——Prosecutor asking witness declared hostile if he had made certain statements to Police — Section, if infringed — Trial, if vitiated.

Section 162, Criminal P. C., is designed to keep out evidence which, it is suggested, is not of a free and of a fair nature but may have been induced by some form of Police duress. But it is stretching the principle a very long way to say that the trial and conviction of certain persons must be vitiated, because an unsuccessful attempt made by a Government Prosecutor anxious to put

CRIMINAL P. C. (V of 1898), S. 162 — 27. Inadmissible statement admitted—Effect

his whole case before the Court, so to speak, fringes on a technical breach of this rule.

Where, therefore, the Prosecutor in cross-examining some of the prosecution witnesses who were turned hostile, asked them if they did not make certain statements to the Police to which they always answered in the negative, there cannot be said to be actual infringement of S. 162. (Cunliffe and Henderson, JJ.) Delbar Mandal v. Emperor.

165 IC 31 : 40 CWN 733 : 9 RC 362 : 37 Cr LJ 1117.

28. Refusal to grant copies of statements—Effect.

——Exclusion of statement of witnesses recorded.

The keeping back of the statements of the witnesses that are recorded is positively repugnant to the law as well as spirit of S. 162 and is wholly incompatible with the claims of justice. Exclusion of such statements is repugnant to the fundamental rules of practice necessary for due protection of prisoners and the administration of criminal justice. (Radke, A. J. C.) Shive Sharnagat v. State.

AIR 1953 Bhopal 21 : 1953 Cr LJ 990.

——Failure to supply copies of statements.

Where there is a prejudice caused to the accused on account of failure to supply them with copies of statements of witnesses the testimony of the witnesses must be received with extreme caution. The Court in such a case will be entitled to altogether ignore such evidence in a proper case. (Radke, A. J. C.) Shive Sharnagat v. State.

AIR 1953 Bhopal 21 : 1953 Cr LJ 990.

——Witnesses examined by police — Grant of copies of statements of witnesses — Rule to be observed.

Ordinarily, the rule is that if the defence is not supplied with the copies of the statements of the witnesses examined by the Police, the testimony of those witnesses should be rejected in toto. Even if such a hard punishment is not imposed on the prosecution, it cannot be disputed that the valuable right of the accused to get the copies of the police statements might be curtailed and that the accused are, therefore, deprived of the valuable right of putting the testimony of the witnesses to the touch-stone of cross-examination. (Radke, A. J. C.) Harinarain v. State.

AIR 1953 Bhopal 8 : 1953 Cr LJ 692.

——Failure to supply copies under S. 162, Proviso —Certificate of fitness under Art. 134 (i) (c) of the Constitution cannot be issued.

See Constitution of India, Art. 134 (1) (c).

AIR 1952 Kutch 54 : 1952 Cr LJ 1037.

——Effect of refusal to grant copies

Where the statement of witnesses recorded under S. 162 were not made available to the accused for cross examination by the police on the

CRIMINAL P. C. (V of 1898), S. 162—28. Refusal to grant copies of statements—Effect

ground that they embody the statements in a special report, an irresistible inference arises that prejudice has been caused to the accused and the conviction must be set aside. (Somasundaram, J.) In re Boya Chinna Lingappa.

AIR 1951 Mad 685 : 1950-2 MLJ 766 : 1951 MWN (Cr) 15 (2) : 1951 MWN 67 (2) : 1952 Cr LJ 509.

——Ss. 162, 172 — Prosecution for offence under S. 161 read with S. 116, Penal Code — Prosecution story altogether unnatural and illogical — Copies of statements of witnesses recorded by police during investigation not supplied even though requested by accused — Recovery of currency notes not mentioned in general-diary— Accused given benefit of doubt and acquitted. (Atma Charan J. C.) Balu v. Rex.

AIR 1950 Ajmer 44 : 51 Cr LJ 1301.

——Defence not supplied with copies of statements made by witnesses to police but report of police which was filed, giving everything that was said by them before police — Accused held not prejudiced — Evidence of witnesses held not inadmissible.

The provision to the defence of copies of statements made to the police is to enable it to see what the witnesses first said and to contradict their evidence. Where material for that purpose was provided by the reports and the case was thus not one in which the defence was deprived of every statement made to the police, nor was there the slightest reason to suppose that the witnesses would have told the police something radically different from the contents of the reports and from their versions in Court, the non-supply of the statements to the accused, held, did not cause any prejudice to the accused, and did not make the evidence of the witnesses inadmissible: AIR (35) 1948 Nag 74, Rel on. (Hemeon J.) Pandita Gangaram v. The Crown.

AIR 1950 Nag 1 : ILR (1950) Nag 229 : 1950 Nag LJ 435 : 51 Cr LJ 235.

——Omission to give copies to accused—Effect.

The right which is given to the accused under S. 162, Criminal P. C., to use the previous statement made to the police for the purpose of contradicting a witness is a valuable right. Where the omission to give the copies to the accused has caused prejudice to the accused the testimony of such witnesses must be received with extreme caution and the Court would be entitled in a suitable case even to ignore altogether such evidence. Every case will have to be decided on its own facts: AIR 1945 Nag 1 and AIR 1946 Nag 173, Rel on. (Bose and Hidayatullah JJ.) Maroti v. Emperor.

AIR 1948 Nag 74 : 1948 NLJ 44 : 1948 AWR (Sup) 30 : 1948 OA (Sup) 30 : ILR (1948) Nag 110 : 49 Cr LJ 58.

——Failure to make available statements to accused in proper time—Prejudice.

CRIMINAL P. C. (V of 1898), S. 162—28. Refusal to grant copies of statements—Effect

Where the statements were never made available to the accused an inference, which is almost irresistible, arises of prejudice to the accused. But, where the Circle Inspector re-examined the witnesses whom the police Sub-Inspector had examined on the same day and the notes of the examination by the Circle Inspector were made available to the accused at the earliest opportunity and when the note book of the police Sub-Inspector was produced towards the end of the prosecution case, counsel for the accused was in a position to ascertain whether there was any inconsistency between the statements made to the police Sub-Inspector and those made later in the day to the Circle Inspector:

Held, that in the peculiar circumstances of the case, no prejudice was occasioned to the accused by the failure to produce in proper time the note-book of the police Sub-Inspector: AIR 1945 Nag 1 and AIR 1931 All 232, Disting. (Lords Wright, Simonds, Uthwatt and Sir John Beaumont.) Kottaya v. Emperor.

AIR 1947 PC 67 : (1947) 1 MLJ 219 : 51 CWN 474 : 60 MLW 258 : 1947 MWN 217 : 230 IC 135 : 1947 ALJ 355 : 13 BR 450 : 49 Bom LR 508 : 74 IA 65 : ILR (1948) Mad 1 : 48 Cr LJ 533 (PC).

——Statements recorded under S. 162 must be preserved—Accused cannot be deprived of right to copies by destruction of record—In serious cases, whole statement of person giving important information must be taken down—Action of investigating officer of destroying notes, deprecated.

Section 162, Criminal P. C., requires the recorded statements to be preserved. That is implicit in the very right accorded to the accused to obtain copies thereof. In serious cases, it is, as a rule, desirable to take down the whole statement of every person who gives important information—especially every person who, from the circumstances of the case, ought to know something about it. The omission of the investigating officer to record separately the statements of the persons examined by him and destruction of the notes taken by him constitute a flagrant attempt to circumvent the law and thereby to defeat the right of the accused.

If a particular rule has been prescribed for achieving a particular object and that object has been defeated by reason of the breach of that rule, it cannot be said that the accused has had a fair trial.

The object of S. 162, Criminal P. C., is to protect the accused, both against over-zealous Police Officers and untruthful witnesses. The statements recorded under S. 162, Criminal P. C., cannot be used at the trial for any purpose except the cross-examination by the accused. The denial to the accused of the benefit of these statements is tantamount to a departure from the mode of trial prescribed by law. The effect of the Court's

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refusal to grant copies to the accused cannot be avoided where the investigating officer destroys the notes and takes away from the Court the power to hold a fair trial. Deprivation of the accused of his statutory right to obtain copies results in the exclusion of evidence and that would be nothing short of interference with the due course of the trial. It would be directly and deliberately encouraging the commission of a fraud on the Act if the investigating officer's infringement of the duty laid on him by S. 162, Criminal P. C., and the Police Regulations were condoned.

No evidence recorded by the Court, unless it satisfies the requirements of S. 138 of the Evidence Act, can become admissible and proper for consideration. It cannot be said that the evidence of a witness is legally admissible against a party even though he, at the time it was given, had not the full opportunity to cross-examine him. The Court is bound to assume prejudice to the accused when they are denied the benefit of the statements of the witnesses recorded by the Police under S. 162, Criminal P. C. The abstract prepared by the investigating officer is no more useful to the accused than a statement of a witness abstracted in a judgment can be.

Police Officers should realise that the statements recorded by them either in the diary or separately in the course of the investigation are not their private property but constitute an unpublished official record relating to an affair of State, which is intended by law to be preserved for purposes of a judicial trial. The destruction of the notes is positively repugnant to the letter as well as the spirit of S. 162 of the Criminal P. C. and is wholly incompatible with the claims of justice. It is to afford protection against the danger of false implication that S. 162, Criminal P. C., has been amended in 1923 so as to arm the accused with the right to call for copies of the previous statements of the witnesses made to and recorded by the investigating officer. (Niyogi and Hemeon, JJ.) Baliram Tikaram v. Emperor.

AIR 1945 Nag 1: 1945 NLJ 17 : ILR (1945) Nag 151 : 18 RN 10 : 218 IC 294 : 46 Cr LJ 448.

——Ss. 162, 537—Accused has statutory right under S. 162 to insist upon copies — Application by accused for copies—Failure of Court to comply with prayer—Provisions of S. 537 cannot be invoked by prosecution.

The Legislature in S. 132, Criminal P. C. has given a statutory right to the accused to insist upon his being supplied with the copies of the Police statements so that he may be able to show by means of cross-examination that the witnesses are making statements in Court which are directly contradictory to what they stated before the Police, and the Courts should be careful to see that the trial of an accused is conducted in the manner so carefully laid down by the Code. The provisions of S. 162 are applicable to the trial

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of a summons case as well as to the trial of a warrant case. Failure to follow the mandatory provisions of S. 162 vitiates the trial and the accused is entitled to have a re-trial. In such a case, the provisions of S. 537, Criminal P. C., cannot be called into aid by the prosecution because unless the statements of the witnesses before the Police have been furnished to the accused or have been seen by the Court itself, the High Court is unable to say that the accused has not been prejudiced and where there is a violation of the plain directions in the statute as to the mode in which the trial of the accused should be conducted, the High Court is bound to assume prejudice to the accused.

An accused was being tried of an offence under S. 182 Penal Code. Before the examination of the prosecution witnesses actually began, the accused put in a petition to the Magistrate complaining that although he made an application asking for a copy of the final report in the case, which was the basis of the complaint against him he had not been supplied any copies so far. He also stated in that petition that he was not in possession of the statements of the witnesses in the Police diary and, therefore, he prayed that the Court may be pleased "to order the copies to be given to him before he was asked to cross-examine the witnesses." The Magistrate, thereupon, merely directed the Police Sub-Inspector to show the final report to the accused before the case was taken up. Thereafter, the witnesses for the prosecution were examined and cross-examined by the accused without his being in possession either of a copy of the final report or of the statements of the prosecution witnesses. The accused was subsequently convicted:

Held, that the whole trial was vitiated by reason of failure of the Magistrate to comply with the provisions of S. 162. (Manoharlall and Chatterji, JJ.) Dinanath Sahay v. Emperor.

AIR 1939 Pat 174 : 17 Pat 622 : 20 PLT 70 : 5 B R 501 : 11 RP 545 : 180 IC 845 : 40 Cr LJ 509.

——Effect of not granting copies.

Failure to observe the provisions of S. 162 amounts to an error curable under S. 537 if there has been no miscarriage or possible miscarriage of justice. To hold otherwise might lead to the most absurd results, for example, in a case where copies of the statements of unimportant or merely formal witnesses were refused to the defence, it would appear in the highest degree unreasonable to order a re-trial of the entire case. At the worst, an omission to supply copies of statements under S. 162, Criminal P. C., would in effect amount to no more than an improper rejection of evidence within the contemplation of S. 167, Evidence Act.

In a case where the evidence is sufficient to justify a decision independently of the evidence of the witnesses, copies of whose statements the

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Court has erroneously omitted to supply to the accused, there should be no difficulty in arriving at a decision that no failure of justice has occurred. There would be other cases, however, where it would be extremely difficult to come to any decision as to the precise extent to which a particular statement might have been of use to the accused and how much the accused has been prejudiced by not having received a copy. It is obviously impossible to lay down a hard and fast rule on the subject. Each case must be decided on its own merits. Generally speaking, if the statement to the Police of a material prosecution witness would, in the opinion of the Court, have been of assistance to the defence, it would be only proper to hold that the omission to supply a copy of it has occasioned a substantial failure of justice. (O'Sullivan, A. J. C. on difference of opinion between Ferrers J. C. and Rupchand, A. J. C.) Emperor v. Hari

AIR 1935 Sind 145 : 28 SLR 397 : 157 IC 697 : 36 Cr LJ 1161 (2).

——Where copies of the statements recorded by a Circle Inspector of Police were not allowed to be given to the accused, as no statement was reduced to writing.

Held, that the accused could not be held to be prejudiced by not being given copies of the statements.

Held, however, that the police officer's report should certainly have been placed on the record, if the accused so desired. (Pullan, J.) Abdul Karim v. Emperor.

AIR 1930 Oudh 505 : 1930 Cr C 1211 : 7 OWN 957.

——Refusal — Prejudice — Trial bad.

Where the trial Court refused to allow the defence to have a copy of the statement of a witness made to the Sub-Inspector and it was found by looking at the statement that the accused had been seriously prejudiced by not being allowed to use the statement in cross-examining that witness.

Held, that the trial was bad. (Cuming and Graham JJ.) Mofizaddi v. Emperor.

AIR 1927 Cal 644 : 45 CLJ 561 : 31 CWN 940 : 104 IC 245 : 28 Cr LJ 805.

29. Failure to observe provisions of S. 162 —Effect.

——Ss. 131 and 162 — Object of—Non-compliance of not to be lightly treated. See ibid, S. 161.

AIR 1953 Bhopal 21 : 1953 Cr LJ 990.

——Ss. 162 and 537 — Failure to observe provisions of S. 162 — Effect — Destruction of short-notes of evidence of important eye-witnesses prepared at time of inquest — Prejudice.

In a case of rioting and murder, the Sub-Inspector who visited the scene of occurrence examined certain eye-witnesses and prepared short-notes of

CRIMINAL P. C. (V of 1898), S. 162—29. Failure to observe provisions of S. 162—Effect

the inquest evidence. These notes were however destroyed by the Sub-Inspector when he prepared the inquest report. Subsequently the Circle Inspector again examined these witnesses and prepared the case diary. But there was nothing to show that these statements were the same that were made earlier at the inquest. All the accused were convicted at the trial:

'Held' that the destruction of the notes of 'inquest evidence' constituted a flagrant violation of the mandatory provisions of S. 162, Criminal P. C. Since the earlier statements made by important eye-witnesses were never made available to the accused an irresistible inference that the accused were prejudiced in their trial arose and it could not be said that the accused had a fair trial. The accused must, therefore, be acquitted as no useful purpose could be served by ordering a retrial. (Somasundaram, J.) In re Sugali Latchigadu.

AIR 1952 Mad 229 : 1952-1 MLJ 42 : 1952 Mad WN 64 : 1952 All WR (Sup) 22 : 65 Mad LW 416 : 1952 MWN (Cr) 12 : 1952 Cr LJ 481.

——Ss. 162, 537—Non-compliance —The breach of the proceedings of S. 162 is a mere irregularity. (S. K. Das, J.) Nur Dewan v. The State.

AIR 1950 Pat 549.

——Trial conducted substantially in manner prescribed by Code — Irregularity involving breach of S. 162 — Irregularity held could be cured under S. 537 and trial was valid notwithstanding the breach of S. 162.

See Cr. P. C. (5 of 1898) S. 537.

AIR 1947 PC 67 : 48 Cr LJ 533.

——Statement of witness to police during investigation inconsistent with statement given at trial —Procedure — Court, if satisfied that there is material contradiction, should tell jury that evidence of such witness should be ignored—Merely telling jury that statements of witness to police are not necessarily true and may possibly be false amounts to incomplete direction vitiating trial. (Khundkar and Ellis, JJ.) Fazlur Rahman v. Emperor.

AIR 1947 Cal 192 : 226 IC 33 : 51 CWN 32 : ILR (1946) 2 Cal 339 : 47 Cr LJ 814.

——Use of police diary to prejudice of accused—Conviction cannot be maintained.

The Court would not be justified in using the police diary to prejudice of the accused, even if the defence requested it to examine the diary. Where the Court peruses the diary it is impossible to avoid the conclusion that it has allowed its mind to be influenced by what it found in the diary and what was not before it. The conviction cannot be maintained in such a case. (Meredith and Imam, JJ.) Sheikh Yusuf v. Emperor.

AIR 1946 Pat 127 : 1946 Pat WN 438 : 227 IC 625 : 13 BR 106.

CRIMINAL P. C. (V of 1898), S. 162—29. Failure to observe provisions of S. 162—Effect

——Ss. 162, 537 — Infringement of mandatory provision of Criminal P. C., if sufficient to hold that Court failed to administer justice.

If a mandatory provision of the Criminal P. C., is infringed, that does not of itself make it necessary to hold that the Court must have failed in administering justice to the accused. In order that an infringement of the provisions of the Criminal P. C., should be of such a nature that it does not come within the purview of S. 537 of the Code, it must go to the root of the trial and must, in effect, vitiate the proceedings. It must in effect amount to an assumption by the Court of a jurisdiction which it does not possess, or a failure to exercise a jurisdiction which it does possess. (Mya Bu and Dunkley, JJ.) Nga U Khine v. Emperor.

AIR 1935 Rang 98 : 13 R 1 : 7 R Rang 332 : 155 IC 66 : 36 Cr LJ 665.

——Omission to comply with S. 162—Validity of trial—Tests.

Whether any irregularity in applying S. 162, has caused prejudice to the accused to such an extent as to vitiate the trial must be decided in each case. (Coldstream and Jailal, JJ.) Mohinder Singh v. Emperor.

AIR 1932 Lah 103 : Ind Rul (1932) Lah 81 : 33 PLR 891 : 135 IC 209 : 33 Cr LJ 97.

——Infringement of rules under is mere irregularity.

The infringement of the provisions of S. 162, Cr. P. Code, is an irregularity which can be cured under S. 537 if it has not occasioned a failure of justice. In considering whether a particular infringement of the provisions of the Cr. P. Code is one which does or does not come within the purview of S. 537, what one has to consider is whether any vital rule of procedure has been broken and whether the irregularity goes to the root of the proceedings: 35 Cal. 31, Appl.; 25 Mad 61 (P. C.), Dist.; AIR 1923 All 81, Ref. (Beaumont, C. J. and Madgavkar, J.) Nurmahomed Kadarbhai v. Emperor.

AIR 1930 Bom 595 : 32 Bom LR 1279 : 1930 Cr C 1182 : 54 Bom 934 : 129 IC 156 : 32 Cr LJ 239.

——Breach of S. 162 not prejudicing the accused does not vitiate trial. The purpose of S. 162 is to amend for the purpose of criminal trials certain sections in the Evidence Act which states what evidence is admissible and inadmissible in certain circumstances. (Rankin, C. J. and C. C. Ghose, J.) Sajjad Mirza v. Emperor.

AIR 1927 Cal 372 : 45 CLJ 199 : 101 IC 478 : 28 Cr LJ 446.

——Ss. 162 and 537— Non-compliance of S. 162—Effect.

In a case against several accused persons, the Magistrate confined his attention only to those, whose names were mentioned before the Chief

CRIMINAL P. C. (V of 1898), S. 162 —29. Failure to observe provisions of S. 162—Effect

Constable, during the police inquiry. He used the statements, made before the Chief Constable, without complying with the provisions of S. 162 of the Cr. P. Code. Those of the accused, whose names were not mentioned during the police investigation, were acquitted by him: and after considering the case against the rest he convicted and sentenced them.

Held, that the prejudice to the accused was clear, and therefore having regard to the explanation to S. 537 of the Code, the Court was bound to presume, under the circumstances of the case, that there was a failure of justice, so far as the trial before the Magistrate was concerned. (Chandavarkar and Pratt, JJ.) Emperor v. Babajigirgauda.

9 Bom LR 366 : 5 Cr LJ 353.

——Statement to police — Admission of, in evidence.

Admission by the Sessions Judge of his own motion the evidence and causing to be filed on the record the statements made by the witnesses to the police are directly opposed to the explicit provisions of S. 162, Criminal P. C. (Fox and Birks, JJ.) Shwe Hla U v. King-Emperor.

10 Bur LR 29 : 2 LBR 125 : 1 Cr LJ 184.

30. Miscellaneous.

——Mala fide conduct of investigating officer — Proof of.

The 'mala fide' conduct of the investigating officer can certainly be urged on behalf of the State and the Court can consider it on the basis of circumstances other than the mere discrepant language of the recorded statement of the witness. (Raghubar Dayal and Hari Shankar, JJ.) Sheo Shankar v. State.

AIR 1953 All 652 : 1953 All LJ 720 : 1953 All WR (HC) 264 : 1953 Cr LJ 1400.

——S. 162 (1), Proviso 1—Statement of prosecution witness to police during enquiry can be made use of in trial in respect of same offence—Whether trial was on challan by Police or on complaint is immaterial. (Bapna, J.) Nanu v. The State.

1953 Raj LW 465.

——Person not examined in course of investigation—Person can be cited as witness.

See ibid, S. 161.

AIR 1952 Orissa 289 : 1952 Cr LJ 1533.

——On the request of the accused statements made by witnesses in investigation—Statements if privileged.

See Evidence Act (1872), S. 124.

AIR 1951 Mad 864 (1) : 52 Cr LJ 984.

——Judge in introductory portion of charge making statement that evidence of certain eye-witnesses to the murder came to light during investigation—Statement held would in effect violate provisions of S. 162, Cr. P. C.

CRIMINAL P. C. (V of 1898), S. 162 — 30. Miscellaneous

See Criminal P. C. (5 of 1893) S. 297.

AIR 1947 Cal 345 : 47 Cr LJ 951.

——Under S. 172 (2) the Criminal Court is entitled and in fact bound in the interests of justice, to check the testimony of the investigating officer and contradict him if necessary by the use of the Police diary.

See Criminal P. C. S. 172 (2).

1947 Rang LR 405.

——Powers of police to require attendance of women witnesses.

It is not a proper course for the Police to take a number of women away from their village to the Police station on the pretext that they wished to examine them. The examinations might be conducted at the women's own houses. (Harington and Pargiter, JJ.) Haladhar Bhumij v. Sub-Inspector of Police, Hura Outpost.

9 CWN 199 : 2 Cr LJ 51.

——S. 163.

See also, Evidence Act, Ss. 24 and 28.

——Mode of recording confessions.

See Criminal P. C. (1898), S. 164.

66 Mad LW 777.

——Inducement of pardon — Confession made is irrelevant.

See Evidence Act (1872), S. 24.

AIR 1951 Punj 399 : 52 Cr LJ 917.

——Confession during cross-examination as approver in another case—Effect of.

Where the confession is made by the accused to a Magistrate during his cross-examination as approver in another case, and not because he was requested to do so by any one acting on behalf of the prosecution, the confession cannot be said to be one made under the influence of promise of pardon. (Young C. J. and Monroe, J.) Jagat Singh v. Emperor.

165 IC 795 : 9 RL 317 : 38 Cr LJ 84.

——Confession— Inducement — Accused knowing that it would be used against him — Confession, if can be said to have been made as result of inducement.

Where there can be no doubt that the accused knew that when he was making his confession, it would be used against him and that he could not expect any leniency as a result of it and the statement made by the Magistrate before the confession as recorded must have put an end to all hopes that might have been held out to the accused, the confession is admissible and cannot be held to have been made as a result of any inducement held out to him. (Leach and Spargo, JJ.) Hamid v. Emperor.

AIR 1936 Rang 453 : 9 R Rang 185 : 164 IC 1118 : 37 Cr LJ 1112.

CRIMINAL P. C. (V of 1898), S. 163

——Inference.

The mere fact of the retraction of a confession is not in itself sufficient to make it appear that it was unlawfully induced. (Addison and Dalip Singh, JJ.) Rahmat v. Emperor.

113 IC 65 : 11 LLJ 5 : 11 AI Cr R 506 : 30 Cr LJ 49.

——Not contrary to section.

The local Government prosecutes offenders. There is no law that it must prosecute every offender, and it is well known that offenders do manage to conceal their misdeeds or that evidence is found insufficient. There is nothing to prevent the prosecuting authority from refraining from prosecution. The discretion to refrain from instituting a prosecution in any particular case is inherent in the authority to which the Law has entrusted the power to institute a prosecution. It makes no difference to the competency of the witness if that assurance of non-prosecuting is communicated before the witness makes any statement. The local Government is quite entitled to give such an assurance or amnesty and it is also entitled to ratify what has already been done by the enquiring officer. Such an assurance therefore in no way affects the competency of the witness to whom it is given, though it may affect the credibility of his evidence. Such an assurance is not contrary to Ss. 163 and 343 of Cr. P. Code. AIR 1923 All 91 Foll. (Prideaux, A. J. C.) Anant Wasudeo Chandekar v. Emperor.

AIR 1925 Nag 313 : 89 IC 1035 : 8 NLJ 138 : 26 Cr LJ 1467.

——Accused pointing out stolen property—Admissibility of evidence should be judged by the provisions of Evidence Act and not by S. 163 Cr. P. C.

See Evidence Act (1872) S. 8.

10 Cr LJ 439 (All) (F.B.)

——**S. 164.**

See also (1) ibid Ss. 297, 337, 364, 533.
(2) Evidence Act, Ss. 21 and 24-26.

SYNOPSIS.

1. Admissibility.

See also (1) Note 11. Evidential value.
(2) Note 21. Retracted confession—
(a) Admissibility.

2. Applicability, scope and object.
3. Certificate.
See note 15. Memorandum.
4. Confession must be voluntary.
(a) Burden of proof.
(b) Confession held not voluntary.
(c) Confession held voluntary.
(d) Duty of Court.
(e) Police influence.
(f) Presumption.
(g) Threat, inducement or pressure.
(h) Rules of practice.
5. Confession or statement.
6. Confession to Magistrate of foreign State.

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7. Copies.
8. Defects in recording.
See also Note 10. Effect of non-compliance.
9. Dying declarations.
10. Effect of non-compliance—Ss. 164 and 533.
See also Note 8. Defects in recording.
11. Evidential value.
(a) Against co-accused.
12. Extra-judicial confession.
13. False statement.
14. 'In the course of investigation etc.'
15. Memorandum.
(a) Absence of—Effect.
(b) Essentials.
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16. Mode of recording and procedure.
(a) Administration of oath.
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17. Oral confession—Discretion to record.
18. Proof.
19. Questioning.
(a) Failure to question.
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(c) Nature and limits of.
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20. Remand to police custody after confession.
21. Retracted confession.
(a) Admissibility.
(b) Conviction and corroboration.
(c) Duty of Court.
(d) Evidential value.
(e) What amounts to.
22. 'Shall then be forwarded.'
23. Verification.
24. Warning.
(a) Absence of.
(b) Fresh warning
(c) Magistrate not disclosing his identity.
(d) Nature and sufficiency of.
(e) Presumption.
(f) Recording of.
25. Who can record.

1. Admissibility.

See also (1) Note 11. Evidential value.
(2) Note 21. Retracted confession.
(a) Admissibility.

——Magistrate holding inquest under S. 176 Cr. P. C. recording confession—Admissibility.

See Evidence Act (1872), S. 21.

AIR 1953 Mad 138 : 1953 Cr LJ 315.

——Ss. 164 and 533—Confession — Admissibility—Test — Evidence Act (1872), S. 24.

Dicta (Per Ray C. J.)—In considering the admissibility of a confession, there is a simple test which can always be employed. The Court will

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address itself to the question "is it proved affirmatively by the prosecution that the confession was free and voluntary"? that it was not preceded by any inducement, threat, or promise held out by a person in authority, if so, whether the effect of such inducement, threat, or promise had clearly been removed before the statement was made. In that case and that case alone, the evidence of that statement is inadmissible. The burden of proof always lies upon the prosecution. It is a mistaken notion to hold that confessions are received in evidence or rejected as inadmissible upon consideration whether they are or are not entitled to credit. A free and voluntary confession deserves the highest credit, because it is presumed to flow from the strongest sense of guilt. It is, therefore, that a confession forced from the mind by flattery of hope or torture of fear comes in so questionable shape, when it is to be considered as an evidence of guilt, that no credit ought to be given to it; and, therefore, it is rejected.

Dicta (Per Das J.)—Section 164, Criminal P. C., cannot be read as though the Magistrate's jurisdiction to record a confession depends on positive proof before him of its voluntary character. The Magistrate, in the circumstances in which he would at the time be placed, can only make a reasonable enquiry, but must come to a well-grounded belief judicially and on a judicial approach. The Legislature has provided that and that alone as sufficient for initial admissibility of a judicial confession trusting to experienced Magistrates to whom alone the function is by law entrusted to discharge their prescribed duty in this behalf properly and responsibly. But this is not to say that the trial Court is relieved of its duty under S. 24, Evidence Act, to exclude the confession if it finds it irrelevant even after it is allowed to go in under S. 164, Criminal P. C. (Ray, C. J. Jagannadhadas and Narasimham JJ.) Bala Majhi v. State of Orissa.

AIR 1951 Orissa 168 : ILR (1951) Cut 65 : 1952 Cr LJ 1743 (FB).

——Ss. 164, 364 and 533.

Magistrate recording statements of accused — Magistrate acting neither under S. 164 nor under S. 364—Oral evidence of Magistrate is not admissible. (Lakshmi Narain J. C.) P. K. Subbiah v. State.

AIR 1952 Tripura 1 : 1952 Cr LJ 1201.

——S. 134 (3)—Confessional statement—Record of, before prosecution case closed — Criminal P. C. (1898), S. 342.

Where in a case of child murder an incomplete challan was produced in Court and the confessional statement of the accused was recorded before the prosecution case was closed and the statement conflicted with medical evidence examined at the trial:

Held, that the confessional statement must be excluded from evidence in determining the guilt

CRIMINAL P. C. (V of 1898), S. 164—1. Admissibility

of the accused. (Bhandari and Harnam Singh JJ.) Harjit Kaur v. Crown.

AIR 1951 Punj 390 : 52 Cr LJ 877.

——S. 164 (3)—Absence of intention to confess—Exculpatory statement to Magistrate not as police officer —Admissibility — Evidence Act (1872), Ss. 24 to 27.

Where an accused makes an exculpatory statement to a Magistrate who had not gone to the place of incident as a police officer but only as a supervisor, so that the statement was not meant to be under S. 161, Criminal P. C., the statement is admissible in evidence and is not excluded by S. 162, Criminal P. C. Such a statement is also not excluded by S. 164 even though it is not recorded in the manner indicated in S. 164 (3).

Exculpatory statements may in certain circumstances subsequently become evidence of guilt itself. In that way they become confessions and attract Ss. 24 to 27, Evidence Act. But the formality indicated in S. 164 (3), Criminal P. C. cannot by any logical process be made to apply when the maker of the statement does not intend to confess, but intends to do just the opposite. (Krishnan J. C.) State of V. P. v. Shiva Bahadur Singh.

AIR 1951 Vind Pra 17 : 52 Cr LJ 561.

——Statement under—It can be used as admission —Evidence Act (1872), Ss. 18 to 21.

A statement made under S. 164, which does not amount to a confession, can be used against the maker as an admission within the purview of Ss. 18 to 21, Evidence Act. The fact that an admission is made to a Magistrate while he is functioning under S. 164, Criminal P. C., cannot take it outside the scope of the Evidence Act. (Lords Greene, Oaksey and Radcliffe; Sir Madhavan Nair and Sir Lionel Leach.) Ghulam Hussain v. The King.

1950 AWR 408 : 1950 ALJ 305 : 52 Bom LR 508 : 1950 All Cr C 122 : 77 IA 65 : 54 CWN 464 : 51 Cr LJ 1522 (PC).

——Confession of accused induced by police torture —Recording of, by Magistrate satisfied of its voluntariness—Admissibility.

See Evidence Act (1872), S. 80.

AIR 1950 Cal 331 : 51 Cr LJ 1282.

——Confession made before Magistrate after removal of police pressure held admissible. (Trivedi J. C.) Shankerji v. Public Prosecutor Bhuj.

AIR 1950 Kutch 37 : 51 Cr LJ 783.

——Evidence of Magistrate to prove what was said by person and Sub-Inspector of Police to accused and what accused actually did—Evidence is admissible.

Where a Magistrate was not examined to prove any confession made by the accused but his evidence was directed to prove what was said by a person and the Sub-Inspector of Police to the accused and what the accused actually did in his

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presence, the deposition did not come within the rule laid down in AIR (23) 1936 PC 253 and the evidence was admissible : AIR (23) 1936 PC 253, Explained. (Seth J.) Jagannath Gupta v. Rex.

AIR 1950 All 9 : 51 Cr LJ 229.

——Offence occurring at Kanpur — Application under S. 164 to Magistrate in Madras to record statement by witness—Such statement does not fall within S. 157, Evidence Act and is not admissible as prior deposition. (Govinda Menon J.) In re C. W. Casse.

AIR 1948 Mad 489 : 61 Mad LW 402 : 1948 Mad WN 401 : 1948 All WR (Sup) 103 : 1948-1 Mad LJ 404 : ILR (1949) Mad 206 : 50 Cr LJ 28.

——Statement not amounting to confession—Admissibility — Evidence Act (1872), S. 21.

A statement of the accused recorded by a Magistrate under S. 164, Criminal P. C., which does not amount to a confession can nevertheless be admitted in evidence under S. 21, Evidence Act as an admission. (Venkataranga Iyengar and Parmasiviah JJ.) Chinnarappa v. Government of Mysore,

28 Mys LJ 80.

——Ss. 164, 533 and 556 — Trial of accused by Magistrate recording confession—Trial not illegal but improper — Confession admissible in evidence in trial.

Though it is not illegal for a Magistrate who has recorded the confession of an accused person to try him subsequently it is most improper and objectionable, for him to do so. For the Magistrate himself may be a material witness on the question of the admissibility of the confesion. The confessing accused should be tried by another competent Magistrate. As the Magistrate recording the confession is not debarred from trying the confessing accused, the confession as recorded by him, if it complies with the requirements of law, is admissible in evidence. (Ba U and Gledhill JJ.). The King v. Tun Shwe,

1947 Rang LR 473.

——Admissibility—Statement of accused under S. 164, not amounting to confession, is admissible as admission : See Evidence Act (1872), S. 21.

53 Mys HCR 17.

——Manual of Govt. Orders — Para. 853 (d).

There is no section of the Criminal P.C. which gives the Executive Govt. power to make rule to supplement the Code, and whatever value may be attached to the para. 853 (d) in the Manual of Govt. Orders, it cannot have any legal effect as regards the admissibility or inadmissibility of the confession. (Bennet and Verma. JJ.). Lal Singh v. Emperor.

AIR 1938 All 625 : 1938 AJL 943 : 11 RA 327 : 1938 AWR 642 : ILR (1938) All 875 : 178 IC 694 : 40 Cr LJ 132.

——Effect on Evidence Act.

Section 1 (2), Criminal P C., shows that the Code does not affect any local or special law in force; so one must look to the Evidence Act for the admis-

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sibility of confessions rather than the Criminal P. C. (Baguley, J.). Nga Thein Maung v. Emperor.

AIR 1936 Rang 350 : 9 R Rang 64 : 164 IC 162 : 37 Cr LJ 920.

——Objections at late stage.

Plea that certain statements are inadmissible for the reason that they were not statements as contemplated by S. 164—Such plea raised for the first time in High Court :

Held, that the High Court will not give effect to the contentions. (Guha and Bartley JJ.) Narain Chandra Biswas v. Emperor.

AIR 1936 Cal 101 : 8 RC 508 : 63 CLJ 191 : 161 IC 289 : 37 Cr LJ 445.

——Procedure laid down by High Court.

Where, in respect of a confession, although there are no very good reasons given why the High Court instructions were not followed on the point but the Magistrate cannot be blamed for following the instructions given to him by his superior officer and the superior officer was not questioned as to his reasons for departing from the ordinary procedure, there is no force in the contentions of the defence as to the admissibility of the confession. (Dalip Singh and Currie, JJ.). Jahangiri Lal v. Emperor.

150 IC 1056 : 7 RL 58 : 35 Cr LJ 1180.

——Where there is evidence that B did make a statement before Magistrate and was put up one day to make a statement, though as the Magistrate was ill, his statement was not recorded :

Held, that inference could fairly be drawn that he did make confession purporting to have been made by him and that the technical objection to admissibility of confession failed. (Dalip Singh and Currie, JJ.) Jahangiri Lal v. Emperor

AIR 1935 Lah 230 : 150 IC 1056 (1072) : 7 RL 58 : 35 Cr LJ 1180.

— Confession recorded under S. 164.

A confession made under circumstances that indicate that it was not merely true, but was also made voluntarily, is not excluded by S. 134, Criminal P. C., if it is otherwise admissible under Ss. 24 to 26, Evidence Act. (Waller and Krishnan Pandalai JJ.) Arunachala Reddi v. Emperor.

AIR 1932 Mad. 500 : 35 MLW 607 : 62 MLJ 680 : 1932 MWN 644 : Ind. Rul. (1932) Mad 552 : 55 Mad 717 : 138 IC 240 : 33 Cr LJ 586.

——Magistrate recording confession—Opinion as to demeanour or guilty conscience—Not admissible in Sessions trial.

In a Sessions trial the opinions of the Magistrate who recorded the confession as to his impressions about the demeanour of the accused, that it showed that he had done something wrong or seen something wrong being done, that he was suffering from guilty conscience are not admissible. (Stuart, C. J. and Raza, J.) Nawab v. Emperor.

AIR 1929 Oudh 381 : 6 OWN 545 : 118 IC 757 : 1929 Cr C 220 : 30 Cr LJ 967.

CRIMINAL P. C. (V of 1898), S. 164 — 1. Admissibility

——Self-exculpatory statement.

Where the statement made by one of the accused persons previous to the trial before another Magistrate was not a confession but was in the nature of an exculpatory statement, and the procedure prescribed in S. 164 of the Cr. P. Code, was not followed.

Held, that the statement was not admissible in evidence against the other accused. (Scott Smith, J.) Batan Singh v. Emperor.

AIR 1925 Lah 334 : 86 IC 219 : 7 LLJ 39 : 26 Cr LJ 731.

——Confessions duly recorded but against orders of District Magistrate is nevertheless admissible in evidence.

A confession duly recorded by a Magistrate in accordance with S. 164 of the Criminal Procedure Code is admissible in evidence in spite of the instruction by the District Magistrate, or even by the High Court or Local Government that he is not to record confession. (Halifax and Macnair, A.J. Cs.) Govinda v. Emperor.

AIR 1921 Nag 39 : 17 NLR 113 : 69 IC 257: 23 Cr LJ 673.

——Inculpatory statements—Admissible in evidence.

Inculpatory statements made under S. 164 are admissible in evidence in a prosecution for perjury (Ayling and Napier, JJ.) Maddela Ramappamma. In re.

AIR 1917 Mad 316 : 39 Mad 977 : 20 MLT 21 : 34 IC 307 : 17 Cr LJ 195.

——**Evidence—Confessions** recorded by Magistrate taking part in investigation, whether admissible.

Confessions recorded by a Magistrate directing a Police investigation are admissible in evidence when they have been voluntarily made, provided the accused is not prejudiced in believing that there is absolutely no use telling the truth to the Magistrate because of his personal relations with the investigating Police. (Pratt, J. C. and Hayward, A. J. C.) Imperator v. Misri.

5 SLR 31 : 12 IC 209 : 12 Cr LJ 489.

——Confesison alleging that it was not voluntary.

Where the accused makes a statement in writing containing an allegation, from which it is to be inferred that the statement of which it forms a part was not voluntarily made, held that such a statement is not admissible under the provisions of the Cr. P. Code. (Woodroffe, J.) Emperor v. Taranath Roy Chowdhry.

37 C 735 : 8 Ind Cas 653 : 11 Cr LJ 694.

——S. 164 — Statements under, admissibility of.

The dead body of a boy was found buried beneath a wall of the house belonging to A. B who was suspected of murder had absconded. A was examined as a witness under S. 164 and deposed that B had murdered the boy. A and B were subsequently tried. A withdrew her statement, saying that she was coerced into making it. Held, that her statement was not admissible in evidence against B the other accused, nor did that statement amount to a confession of her own guilt. (Stanley, C. J. and Banerji, J.) Sri Ram and Choti v. Emperor.

2 ALJ 100 : 2 Cr LJ 59.

2. Applicability, object and scope.

——Practice — Murder case — Desirability of statement of accused on first questioning recorded under S. 164. See ibid, S. 162.

AIR 1953 Mad 61 : 1953 Cr LJ 245.

——Scope and object.

Dicta (Per Ray C. J.) —The language of S. 164 leaves it optional to the Magistrate to record the confession or not as he thinks fit, but if he proceeds to record, he is bound to do so in the manner laid down in the section in as faithful a manner as possible so as to guarantee the result aimed at by such record, viz. (i) fidelity of faithful reproduction of the statement, (ii) spontaneity of the making thereof; (iii) awareness in the accused's mind of the risk that he has to incur in case he makes a confessional statement in relation to the charge in which he has been arraigned and lastly, (iv) a sense of safety from the risk, physical or mental, if any, consequent upon his refusal to make one. The intendment of the requirement under S. 134, Criminal P. C., is clearly for the removal of the impressions referred to in S. 24, Evidence Act. (Ray C. J., Jagannadhadas and Narasimham, JJ.) Bala Majhi v. State of Orissa.

AIR 1951 Orissa 168 : ILR (1951) Cut 65 : 1952 Cr LJ 1743 (FB).

——S. 164 (1) — Illegal arrest — Effect of, on validity of confession.

See ibid, S. 46 (1).

AIR 1951 Him Pra 1 : 52 Cr LJ 50.

——Courts (Emergency Provisions) Repealing Act 1947 (Burma Act (II (2) of 1947) — Retrospective effect — Repeal of S. 14 (j) and (o) of Courts (Emergency Provisions) Act 1943 (Burma Act XI 11 of 1943) — Revived S. 25, Evidence Act and S. 164, Criminal P. C. would apply to pending proceedings — Pending proceedings include appeal. (Ernest H. Goodman Roberts. C. J., Ba U and E Maung, JJ.) King v. Thorpe.

1947 Rang LR 279 (FB).

——Applicability.

Section 164 applies to all sorts of confessions, whether they are made by a person who is accused of an offence or not. Whether the confessor at the time he made the confessional statement was an accused person or not depends upon the stage of of the investigation. (Teja Singh and Sharif, JJ.) Karim Ilahi v. Emperor.

AIR 1947 Lah 92 : 225 IC 544 : 48 PLR 382 : 47 Cr LJ 772.

CRIMINAL P. C. (V of 1898), S. 164 — 2. Applicability, object and scope

——Section 342 does not apply to confessions under S. 164. (Teja Singh and Mahammad Sharif JJ.) Karam Ilahi v. Emperor.

AIR 1947 Lah 92 : 48 Pun LR 382 : 225 IC 544 : 47 Cr LJ 772.

——Immunity from Police influence.

If there is one thing more than another that the Criminal P. C. seeks to safeguard, it is the immunity of potential witnesses and, in particular, potential approvers, from Police influence. (Braund, J.) Emperor v. Jagadish.

AIR 1946 All 249 : ILR (1945) All 722 : 224 IC 601 : 1946 All WR (H C) 375 : 47 Cr LJ 677.

——Evidence of what accused said when arrested, is denied to defence under Indian procedure—But an accused person can, if he knows it, make a statement of his version of the case before a Magistrate. (Burn and Mockett, JJ.) In re Appalanarasayya.

AIR 1941 Mad 101 : 1940 MWN 937 : 52 LW 495 : 13 RM 581 : (1940) 2 MLJ 715 : ILR (1941) Mad 81 : 192 IC 586 : 42 Cr LJ 308.

——The admission of a guilt in an application dictated to a petition-writer in a Magistrate's Court and afterwards presented to the Magistrate is admissible under S. 21, Evidence Act. It does not become irrelevant under S. 24 or S. 25 of that Act. There is nothing in the Criminal P. C., which says that a confession contained in a document delivered to a Magistrate shall not be relevant in spite of the provisions of the Evidence Act. The application need not be verified in accordance with the provisions of S. 364, Criminal P. C. It is the statement in the confession and not the verification of the statement which affords the evidence that the accused is guilty. (Allsop, J.) Ram Naresh v. Emperor.

AIR 1939 All 242 : 1939 ALJ 107 : 1939 AWR 190 : 11 RA 597 : ILR (1939) All 377 : 181 IC 646 : 40 Cr LJ 559.

——Confession not recorded properly— Magistrate taking down confession called as witness—Procedure whether proper.

In the matter of construction, Ss. 164 and 364, Criminal P. C., must be looked at and construed together and it would be an unnatural construction to hold that any other procedure was permitted than that which is laid down with such minute particularity in the sections themselves. The practice of allowing Magistrates as witnesses to depose to confessions is improper and that where matters could be put on record and would be admissible when so put, there are the strongest reasons, of policy for supposing that the Legislature designed that such matters should be available in that form and in no other. (Grille and Gruer, JJ.) Neharoo Mangtu v. Emperor.

AIR 1937 Nag 220 : 9 RN 281 : ILR (1937) Nag 268 : 168 IC 962 : 38 Cr LJ 642.

CRIMINAL P. C. (V of 1898), S. 164 — 2. Applicability, object and scope

——Ss. 164, 342 and 364, Criminal P. C., whether exhaustive—S. 21, Evidence Act, if limited.

Sections 164, 342 and 334, Criminal P. C., are not exhaustive and do not limit the generality of S. 21, Evidence Act, as to the relevancy of admissions. (Baguley, J.) Nga Thein Maung v. Emperor.

AIR 1936 Rang 350 : 9 R Rang 64 : 164 IC 162 : 37 Cr LJ 920.

——Evidence — Magistrates, position of — Magistrates not to act as Police Officers but as judicial persons.

As a matter of good sense, the position of accused persons and the position of the Magistracy are both to be considered. An examination of the Code shows how carefully and precisely defined is the procedure regulating what may be asked of or done in the matter of examination of accused persons and as to how the results are to be recorded and what use is to be made of such records. Nor is this surprising in a jurisdiction where it is not permissible for an accused person to give evidence on oath. So with regard to the Magistracy, it is, for obvious reasons, most undesirable that Magistrates and Judges should be in the position of witnesses in so far as it can be avoided. Sometimes, it cannot be avoided as under S. 533, but where matter can be made of record and, therefore, admissible as such, there are the strongest reasons of policy for supposing that the Legislature designed that it should be made available in that form and no other. It would be particularly unfortunate if Magistrates were asked at all generally to act rather as Police Officers than as judicial persons; to be by reason of their position freed from the disability that attaches to Police Officers under S. 162 of the Code ; and to be at the same time freed, notwithstanding their position as Magistrates from any obligation to make records under S. 164. In the result, they would indeed be relegated to the position of ordinary citizens as witnesses and then would be required to depose to matters transacted by them in their official capacity unregulated by any statutory rules of procedure or conduct whatever. (Lord Roche, Sir John Wallis, Sir Lancelot Sanderson, Sir Shadilal and Sir George Rankin)' Nazir Ahmad v. King-Emperor.

AIR 1936 PC 253 (2) : 38 Bom LR 987 : 1936 OWN 505 : 1936 MWN 745 : 9 RPC 57 : 1936 ALJ 895 : 40 CWN 1221 : 17 PLT 594 : 71 MLJ 476 : 39 PLR 43 : 44 LW 583 : 19 NLJ 214 : 17 Lah 629 : 64 CLJ 445 : 63 IA 372 : 1936 AWR 620 : 163 IC 881 : 37 Cr LJ 897 (PC).

——Ss. 164, 364 — Magistrate not acting under S. 164 or S. 364 but giving oral evidence of confession—Evidence, if admissible — Conviction mainly on such evidence — Whether can be maintained. AIR 1922 Mad 40 : 23 Cr LJ 680 ; AIR 1936 Lah 247 : 37 Cr LJ 432; AIR 1934 All 81 : 35 Cr LJ

CRIMINAL P. C. (V of 1898), S. 164 — 2. Applicability, object and scope

385 (FB) ; AIR 1933 Lah 716 : 34 Cr LJ 1025 (2) (FB) ; AIR 1918 Lah 92 : 19 Cr LJ 651 ; 1881 Pun Re No. 21 (Cr), Impliedly overruled.

A Magistrate would not be obliged to record any confession made to him if, for example, it were that of a self-accusing madman or for any other reason the Magistrate thought it to be incredible or useless for the purposes of justice. Whether a Magistrate records any confession is a matter of duty and discretion and not of obligation. The rule which applies is that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden. Although the Magistrate acting under the group of sections relating to recording of confessions is not acting as a Court, yet he is a judicial officer, and both as a matter of construction and of good sense, there are strong reasons for applying the rule in question to S. 164, Criminal P. C. The effect of the statute is clearly to prescribe the mode in which confessions are to be dealt with by Magistrates when made during an investigation, and to render inadmissible any attempt to deal with them in any other method. Consequently, an accused person should not be convicted mainly, if not entirely, on the strength of a confession said to have been made by him to a Magistrate of which evidence was given by the Magistrate but which was not recorded under S. 164, Criminal P. C., as the evidence of such confession is inadmissible where the Magistrate neither acts or purports to act under S. 134 or S. 364 and nothing is tendered in evidence as recorded or purporting to be recorded under either of these sections. AIR 1922 Mad 40 : 23 Cr LJ 680 ; AIR 1936 Lah 247 : 37 Cr LJ 432 ; AIR 1934 All 81 : 35 Cr LJ 385 (FB) ; AIR 1933 Lah 716 : 34 Cr LJ 1025 (2) (FB) ; AIR 1918 Lah 92 : 19 Cr LJ 651 ; 1881 Pun Re No 21 (Cr), Impliedly overruled. (Lord Roche, Sir John Wallis, Sir Lancelot Sanderson. Sir Shadilal and Sir George Rankin.) Nazir Ahmad v. King-Emperor.

AIR 1936 PC 253 (2) : 38 Bom LR 987 : 1936 OWN 505 : 1936 MWN 745 : 9 RPC 57 : 1936 ALJ 895 : 40 CWN 1221 : 17 PLT 594 : 71 MLJ 476 : 39 PLR 43 : 44 MLW 583 : 19 NLJ 214 : 17 Lah 629 : 64 CLJ 445 : 63 IA 372 : 1936 AWR 620 : 163 IC 881 : 37 Cr LJ 897 (PC).

——Ss. 164, 364 — Construction of Ss. 164 and 364— Precautions to be observed — Ss. 164, 364, to be construed together. AIR 1933 Lah 716 : 34 Cr LJ 1025 (2) (FB) ; AIR 1936 Lah 247 : 37 Cr LJ 432 ; AIR 1918 Lah 92 : 19 Cr LJ 651 ; AIR 1934 All 81 : 35 Cr LJ 385 (FB) ; AIR 1922 Mad 40 : 23 Cr LJ 680 and 1881 Pun Re No 21 (Cr), Impliedly overruled.

Sections 164 and 364, Criminal P. C., must be looked at and construed together, and it would be an unnatural construction to hold that any

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other procedure was permitted than that which is laid down with such minute particularity in the sections themselves. It is wrong to say that the only effect of S. 164 is to allow evidence to be put in a form in which it can prove itself under Ss. 74 and 80 of the Evidence Act, as, if such a construction is adopted, all the precautions and safeguards laid down by Ss. 134 and 364 would be of such trifling value as to be almost idle. Any Magistrate of any rank could depose to a confession made by an accused as long as it was not induced by a threat or promise, without affirmatively satisfying himself that it was made voluntarily and without showing or reading to the accused any version of what he was supposed to have said or asking for the confession to be vouched by any signature. The range of Magisterial confessions would be so enlarged by this process that the provisions of S. 164 would almost inevitably be widely disregarded. It is a section conferring powers on Magistrates and delimiting them. AIR 1933 Lah 716 : 34 Cr LJ 1025 (2) (FB) ; AIR 1936 Lah 247 : 37 Cr LJ 432 ; AIR 1918 Lah 92 : 19 Cr LJ 651 ; AIR 1934 All 81 : 35 Cr LJ 385 (FB) ; AIR 1922 Mad 40 : 23 Cr LJ 680 : and 1881 Pun Re No 21 (Cr), Impliedly overruled. (Lord Roche, Sir John Wallis, Sir Lancelot Sanderson, Sir Shadilal and Sir George Rankin.) Nazir Ahmad v. Emperor.

AIR 1936 PC 253 (2) : 38 Bom LR 987 : 1936 OWN 505 : 1936 MWN 745 : 63 IA 372 : 1936 AWR 620 : 9 RPC 57 : 1936 ALJ 895 : 44 LW 583 : 40 CWN 1221 : 17 PLT 594 : 71 MLJ 476 : 39 PLR 43 : 19 NLJ 214 : 17 L 629 : 64 CLJ 445 : 163 IC 881 : 37 Cr LJ 897 (PC).

——Ss. 164, 195— Magistrate recording statement under S. 164— Whether a Court —Offence under S. 193, Indian Penal Code, committed in respect of statement recorded under S. 164, Criminal P. C.—Offence, if can be taken cognizance of without complaint in writing of Magistrate.

A Magistrate under S. 164, Criminal P. C., does not act mechanically merely as a ministerial officer. He can record a statement or confession made to him in the course of an investigation as well as before the commencement of an inquiry or trial. A Magistrate recording statements under S. 164, Criminal P. C., is a Court within the meaning of S. 195 of the Code. Consequently, when an offence punishable under S. 193, Penal Code, is alleged to have been committed in respect of previous statements made by the accused under S. 164, Criminal P. C., cognizance of the offence cannot be taken without a complaint in writing of such Court or some other Court to which it is subordinate. (Sulaiman, C. J. and Bajpai, J.) Har Narain v. Hoshiar Singh.

AIR 1935 All 341 : 1935 ALJ 228 : 1935 AWR 131 : 8 RA 372 : 57 A 778 : 158 IC 1118 : 36 Cr LJ 1505.

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——The provisions of S. 164, Criminal P. C., are imperative and mandatory and it is the duty of every Magistrate to follow these provisions strictly, and if he fails to do so he would be failing in the discharge of his duty. (Sulaiman C. J. Kendall and Young, JJ.) Mahomed Ali v. Emperor.

AIR 1934 All 81 : 1933 ALJ 1557 : 6 RA 467 : 56 All 302 : 147 IC 390 : 35 Cr LJ 385 (FB).

——Effect.

The object of the Legislature in enacting the provisions of S. 164, Criminal P. C., was not to exclude certain confessions which would otherwise be admissible, but to facilitate the proof of confessions made and to enable a Court at a trial more easily to decide whether any particular confession produced in evidence was voluntarily made and was worthy of consideration. A confession cannot be excluded from evidence as irrelevant merely because all the provisions of S. 134, Criminal P. C., were not carefully complied with. (Smith and Allsop, JJ.) Khitali v. Emperor.

AIR 1933 Oudh 404 : 10 OWN 937 : 1934 Oudh LR 39 : 6 RO 190 : 146 IC 905 : 35 Cr LJ 192.

——Calcutta police.

Even though the police in Calcutta may not conduct their investigations in precise accordance with the provisions of Ch. XIV, to construe S. 164 which would exclude its utilization in Calcutta during the police investigation or at any time afterwards before the commencement of the enquiry or trial, is to read it in a somewhat strained and unnatural sense. AIR 1925 Cal 587; 15 Cal 595 (FB), Dist. (Adami and Bucknill, JJ.) Nilamadhab Chaudhury v. Emperor.

AIR 1926 Pat 279 : 96 IC 509 : 7 AI Cr C 75 : 5 Pat 171 : 27 Cr LJ 957.

——Calcutta police.

S. 164, Cr. P. Code, in spite of the alteration that it has undergone by the amendment introduced by Act XVIII of 1923 does not apply to the confessions recorded in investigations conducted by the police in the town of Calcutta. (Mukerji, J.) Emperor v. Panchkari Dutt.

AIR 1925 Cal 587 : 86 IC 414 : 52 Cal 67 : 29 CWN 300 : 26 Cr LJ 782.

——Propriety of action under.

An indiscriminate use of the provisions of S. 164, Cr. P. C., is not to be encouraged but there are occasions when recourse to these provisions is necessary in the ends of justice, as for instance where judicial officers are prosecuted for bribery. (Rattigan, C. J.) Harsukh Rai v. Emperor.

3 PWR Cr 1919.

3. Certificate. See Note 15—Memorandum.

4. Confession must be voluntary.

(a) Burden of proof.

(b) Confession held not voluntary.

(c) Confession held voluntary.

(d) Duty of Court.

CRIMINAL P. C. (V of 1898), S. 164 — 4. Confession must be voluntary

(e) Police influence.

(f) Presumption.

(g) Threat, inducement or pressure.

(h) Rules of practice.

4. Confession must be voluntary.

(a) Burden of proof.

——S. 164 (3)—Voluntary nature of confession—Burden of proof — Duty of prosecution to prove that there were no threats, promises or inducements.

See Evidence Act (1872), S. 24.

AIR 1951 Him Pra 1 : 52 Cr LJ 50.

——Confession by accused — When can be used by prosecution — Circumstances making confession irrelevant—Burden of Proof.

See Evidence Act (1872), S. 24.

1952 RLW 103 : ILR (1951) 1 Raj 929.

——Voluntary nature of confession — Burden of proof is on prosecutions.

See Evidence Act (1 of 1872), S. 24.

AIR 1950 Orissa 202 : 51 Cr LJ 1493.

——Burden of proof.

Under the Evidence Act, in the case of a confession duly recorded under S. 164, Criminal P. C., the presumption is that the confession was freely made. The burden of showing that a confession recorded under this section is inadmissible lies upon the accused. In itself, the mere fact of retraction is not sufficient to make it appear that the confession cannot be received. Nevertheless, in ordinary cases and as a general rule corroborative evidence is required to show both that the confession was freely made and that it is true. (Ferrers, J. C. and Mehta, A. J. C.) Pharho v. Emperor.

AIR 1932 Sind 201 : 141 IC 392 (2) : 34 Cr LJ 147.

4. Confession must be voluntary.

(b) Confession held not voluntary.

——Confession must be voluntary — Confession recorded not in compliance with law—Confessions held come within mischief of S. 24, Evidence Act.

See Evidence Act (1872), S. 24.

AIR 1953 Bilaspur 3 : 1953 Cr LJ 708.

——Non-compliance with — Effect — Confession held not voluntary.

An accused was produced from police custody before the Magistrate, who gave him a few minutes, and then started recording his confession. Only two questions were put to him before his statement was taken down, namely that if he made the confession, it would be given in evidence against him, and whether he was making the confession voluntarily. It was doubtful whether the Magistrate even told him before taking down his confession that he was not bound to make a confession, though the certificate at the end of the confession was in the form provided in S. 164 :

CRIMINAL P. C. (V of 1898), S. 164— 4. Confession must be voluntary—(b) Confession held not voluntary

Held that considering that though the accused was coming direct from police custody, the Magistrate did not try to find out from him whether he had been threatened or induced to make the confession, the confession could not be regarded as voluntary. (Wanchoo, C. J. and Bapna, J.) State v. Magha.

AIR 1952 Raj 97 : 1951 Raj LW 436 : ILR (1951) 1 Raj 429 : 1952 Cr LJ 1055.

——Confession made immediately after police custody.

Where an accused, a young lad of 18 years of age, was produced from police custody, and there was nothing on the record to show that any time was given to him for reflection before he was asked to make his statement :

Held, that this confession made by him was not a voluntary one. (Chowdhary, J. C.) Ranjha v. The State.

AIR 1951 Him Pra 75 : 1952 Cr LJ 15.

——Voluntary confession— Accused illiterate and ignorant woman— Confession full and detailed and facts stated in natural and proper sequence — Entire prosecution case set out therein — Everything necessary for prosecution to prove charge of murder admitted — Confession held was not voluntary and must be discarded. (Hemeon and Sen, JJ.) Mt. Bhukhin v. Emperor.

AIR 1948 Nag 344 : ILR (1948) Nag 147 : 1948 AWR Sup 145 : 1948 NLJ 489 : 49 Cr LJ 561.

——S. 164 (3)— Magistrate performing many of functions of police during investigation — Recording of confession at suggestion and in presence of police — Confession held not voluntary: AIR 1936 PC 263, Ref. (Din Mohammad and Cornelius, JJ.) Emperor v. R. B. Lovett.

231 IC 408 : 48 Cr LJ 794 (Lah).

——Confession— Admissibility — Held, conduct of Police Sub-Inspector and the Magistrate was such as to cast doubt on genuineness of confession.

In a murder trial, the Sub-Inspector who was in charge of the investigation took a Magistrate with him to witness the accused discover the dead body. The Magistrate, instead of doing what he was brought for, took charge of the investigation and taking aside the accused, recorded his confession in instalments. All along the Sub-Inspector kept on looking till the post mortem examination, when he proceeded to inquire and take notes of what the accused had deposed before the Magistrate:

Held, that the behaviour of the officers was so abnormal that it cast a good deal of doubt on the genuineness of the confession. (Young C. J. and Ramlall, J.) Akbar Badr Din v. Emperor.

AIR 1938 Lah 594 : 11 RL 339 : 40 PLR 890 : 177 IC 617 : 39 Cr LJ 907 (2).

CRIMINAL P. C. (V of 1898), S. 164— 4. Confession must be voluntary—(b) Confession held not voluntary

——Confession to Zaildar by minor accused — Inducement — Subsequent confession to Magistrate.

The accused, a Punjabi village boy of 16, made a confession to the Zaildar to whom he was taken by the Police. The Zaildar told him "you are a minor. You will be let off if you tell the truth before the Police just as you have done in our presence". The Magistrate who recorded the confession gave evidence that he told the accused that he was not to allow any inducement to operate upon his mind in making the confession:

Held, that the assurance made by the Zaildar to the accused either itself would operate upon his mind when he made the confession or that the inducement would, in all probability, have been repeated before the confession was made and the confession must be excluded. (Young C. J. and Monroe, J.) Faiz Ahmad v. Emperor.

AIR 1936 Lah 855 : 9 RL 313 : 165 IC 880 : 38 Cr LJ 27.

——Confession made before the Sub-Magistrate after the Police Inspector had threatened the accused, and at the earliest possible moment after he had got out of the influence of the Police, he retracted what he had said, is not a confession at all. (Sir Owen Beasley, C. J. and Bardswell, J.) Mala Paddavadu v. Emperor.

1933 MWN 723.

——Ss. 164, 364 — Confession — Not recorded in accordance with rules, validity of— No question asked—Confession, retracted—Value of.

A statement by an accused person not recorded in strict compliance with the rules for recording confession and without asking questions as to its voluntariness and genuineness and which was wanting in details and which is uncorroborated and withdrawn at the earliest opportunity. cannot be regarded as a voluntary and genuine confession. (Knox and Walsh, JJ.) Emperor v. Azim-ud-din.

AIR 1920 All 108 : 2 UPLR (All) 218 : 57 IC 462 : 21 Cr LJ 638.

4. Confession must be voluntary—

(c) Confession held voluntary.

——Confession — When voluntary.

A Magistrate promptly and explicitly brought to the notice of the accused that he was not bound to make a confession, that he was a Magistrate and that if he made any confession, it might be used as evidence against him. He then sent him away to jail for 24 hours and recorded the confession on the next day after the accused had plenty of time to think over the matters:

Held, that the confession was voluntary. (Misra and Chandiramani, JJ.) Mendai Singh v. State.

AIR 1952 All 486 : 1951 All WR (HC) 30 : 1951 All Cr Cas 4 : 1951 All LJ 444 : 1952 Cr LJ 883.

CRIMINAL P. C. (V of 1898), S. 164— 4. Confession must be voluntary—(c) Confession held voluntary

——S. 164 (3) — Accused making confession and sticking to it in committing Court—Accused more or less standing by confession also in Sessions Court—Confession held could not be rejected. (Jagannadhadas and Panigrahi, JJ.) Suka Misra v. The State.

AIR 1951 Orissa 71.

——Delay in making confession is only material if there is possibility of accused's being induced to make it.

Delay in making a confession becomes material only when there is an apprehension that extraneous influence might have been exercised over the accused and that the time which had elapsed between the arrest and actual making of the confession had been employed in order to force the accused to make a confession.

Where the accused who was in police custody refused to make a confession in spite of the efforts of the police but made a confession after he was sent to a judicial lock-up, it was held that the delay in making the confession in the special circumstances of the case was of no avail and it was voluntary. (Nawalkishore, C. J. and Sukhdeonarain, J.) Sarkar v. Leharki.

1947 MLR 8 (Cr).

——Rape on a child—Complaint of robbery— Confession—(Evidence Act, S. 24.)

Where the accused committed rape on a girl, and confessed the guilt, which confessions were recorded by a Magistrate, but in appeal it was contended that the confessions were not admissible in evidence and that the girl having in the first instance complained only of the robbery of her ornaments was not credible witness :

Held, that the contentions were not valid as the confessions were validly recorded and appeared to be voluntary, and the fact that the girl in the first instance complained only of the robbery of the ornaments to the strangers was natural. (Arthur Reid, C. J.) Sosni v. Emperor.

8 IC 494 : 93 PLR 1910 : 11 Cr LJ 665 (1).

4. Confession must be voluntary—
(d) Duty of Court.

——Accused desiring to confess — Proper course to adopt.

Where the accused expresses his desire to confess the proper course to adopt is to put him in the judicial lock-up, and to let him remain there for a sufficiently long time to enable him to reflect on the consequences of making a confession, before producing him before a Magistrate for the recording of his statement under S. 164, Criminal P. C. Furthermore, not only should the accused be taken back to the judicial lock-up after the recording of his confession, but before the Magistrate proceeds to record the confession, the accused should be assured that after he has made his statement he would not be delivered to police custody but would again be sent back to the judicial lock-up. So long as these precautions are not observed, there is always danger of the confession not being held to be voluntary. (Chowdhry, J. C.) Findal v. State.

AIR 1954 Him Pra 11 : 1953 Cr LJ 1900.

——It is not enough for the Magistrate to record the confession and say that he was satisfied as to its voluntary nature, but the Courts before whom the confession is used must have materials on which they can be satisfied that the confession was in fact voluntary. (Chowdhry J. C.) Sant Ram v. State.

AIR 1953 Him Pra 105 : 1953 Cr LJ 1665.

——Duty of Court—Probative value of confession. See Evidence Act (1872), S. 24.

AIR 1953 Hyd 145 : 1953 Cr LJ 785.

——Inordinate delay between accused's willingness to confess and actual recording — (Evidence Act (1872), S. 24.)

Where the time that elapsed between the alleged willingness of the accused to confess their guilt and the actual recording of their confessions was an inordinately long one, about a month and a half the voluntary character of their confessions under S. 164, cannot but be doubted. It is an important element for the consideration of the Magistrate who is about to record a confession, so that where he fails to do so despite the accused having been produced from police custody he can hardly be said to have done all that is reasonably necessary to lead him to believe under S. 164, that the confession was being made voluntarily. (Chowdhry, J. C.) Kirpa v. State.

AIR 1952 Him Pra 68 : 1952 Cr LJ 1495.

——S. 164 (3)— Voluntary confession — Duty of Magistrate.

Besides the warning specifically provided for in the first part of S. 164 (3) the accused should also, in clear terms, be assured of protection from any sort of apprehended torture or pressure from such extraneous agency as the police or the like in case he declines to make a statement. The Magistrate who is entrusted with this duty, must appreciate his function in that behalf as one of a Judicial Officer and must apply his judicial mind to the task of ascertaining that the statement that the accused is going to make is of his own accord and not on account of any influence on him. He has also to bear in mind that satisfaction of his conscience as to the voluntary character of the statement is not the only act to be achieved by him, but he should leave such materials on the record as would satisfy the Court which is to decide the case, that the confessional statement was in fact voluntarily made. (Chopra and Passey J.) Sajjan Singh v. State.

AIR 1952 Pepsu 94 : 1952 Cr LJ 952.

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——Confession—True or false.

A confession, which not only confesses the crime but builds up the entire prosecution case against the accused and introduces facts not within her knowledge or paves the way for corroborative evidence already in the possession of the Police, is always suspect.

The Court must take the accused's statements in the Court into consideration as much as other evidence in considering the question whether her confession is true. (Baxi, J. C.) State v. Waghela Hiranbai Khojati.

AIR 1951 Kutch 92 : 1952 Cr LJ 10.

——Omission to ascertain voluntary nature of confession and treatment at hands of police — The Magistrate has failed to comply with directions given in (Travancore) High Court Criminal Circular No. 3 of 1072 — It is not safe to rely on confession — Evidence Act (1872), Ss. 24, 26. (K. T. Koshi and P. Habeeb Mohammad JJ.) Padmanabham Pillay Parmeswaran Pilli v. Sirkar.

1949 KLT 198.

——Scope — A mandatory provision — Magistrate failing in his duty to ask questions to satisfy himself that confession is voluntarily made—Mere warning not enough—Confession if admissible in evidence.

Section 164 (3) clearly enjoins upon a Magistrate recording a confession, the duty of warning the accused in the manner stated in the sub-section itself, and prohibits the Magistrate from proceeding with the recording of the confession until he has questioned the person making it, and from the answers given, has satisfied himself that the confession that is about to be made will be a voluntary statement. (Agarwala and Das JJ.) Baldeomushar v. Emperor.

AIR 1947 Pat 281 : 25 Pat 391 : 13 BR 180 : 27 PLT 315 : 228 IC 296 : 48 Cr LJ 86.

——S. 164 (3)—Confession whether voluntary — Magistrate should take care to see from what custody accused was brought.

In ascertaining whether the confession which the accused was going to make was voluntary or not the Magistrate should take care to see from what custody the accused was brought before him. (Das and Ray JJ.) Punia Mallah v. Emperor.

AIR 1946 Pat 169 : 24 Pat 646 : 1945 PWN 397 : 228 IC 51 : 13 BR 120 : 48 Cr LJ 30.

——Magistrate's failure to examine body of accused—If a defect.

If the accused complains to the Magistrate that he was beaten by the Police in order to extort his confession, it is certainly the duty of the Magisterate to examine his body, but in absence of such complaint, the mere fact that the Magistrate did not examine his body cannot be regarded as an invalidating circumstance for the confession. (Divatia and Lokur, JJ.) Chavadappa Pujari v. Emperor.

AIR 1945 Bom 292 : 47 Bom LR 63 : 1946 Bom Rul 23 : 221 IC 86 : 47 Cr LJ 51.

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——Accused in company of Police immediately before recording of statement — Record not showing that Magistrate satisfied himself that statement was voluntary or that he gave warning or caution to accused.

A statement of the accused amounting to a confession was recorded by a Magistrate under S. 164, Criminal P. C. The accused was brought from village before the Magistrate by the Sub-Inspector of Police and was in the company of the Sub-Inspector until immediately before he made the statement. The record of the statement did not contain anything to show that the Magistrate satisfied himself at the time, that it was being made voluntarily or that he addressed any kind of warning or caution to the accused. The statement was admitted in evidence:

Held, that the Sessions Judge ought to have questioned the Magistrate and the Sub-Inspector as to the circumstances under which the statement came to be made and ought not to have admitted the statement in evidence unless the replies he received were satisfactory and showed that the statement was a voluntary one. (Rowland and Shearer, JJ.) Bhola Gope v. Emperor.

AIR 1942 Pat 283 : 8 BR 326 : 14 RP 410 : 23 PLT 566 : 198 IC 92 : 43 Cr LJ 301.

——Question of fact.

Per Rowland J.—It is a question of fact for the trial Court whether a confession was voluntary or not. (Manohar Lall and Rowland JJ.) Emperor v. Dubai.

AIR 1942 Pat 113 : 8 BR 129 : 21 Pat 153 : 14 RP 259 : 196 IC 852 : 43 Cr LJ 90.

——Accused retracting confession and alleging torture by Police, resulting in serious injuries—Magistrate must take immediate steps to have the accused examined by a competent doctor.

(Attention of Local Govt. drawn). (Young C. J. and Blacker, J.) Gurdit Singh v. Emperor.

AIR 1939 Lah 66 : 11 RL 899 : 41 PLR 290 : ILR (1939) Lah 216 : 181 IC 924 : 40 Cr LJ 614.

——Magistrate, if should ask accused in so many words whether confession was a voluntary one.

In taking the confession, the Magistrate need not ask the accused in so many words whether it was a voluntary confession. All that is required is that the Magistrate should satisfy that the confession is voluntary. (Cunliffe and Henderson, JJ.) Emperor v. Arajaddin Molla.

165 IC 196 : 9 RC 257 : 40 CWN 872 : 37 Cr LJ 1101.

——Ss. 164 (3), 533—Omission to ascertain from the accused that confession was voluntary.

When a Magistrate records a confession without ascertaining from the accused that the confession is being made voluntarily, the confession is inadmissible in evidence. The defect is not cured by the Magistrate, when examined in the Court as a witness, saying that according to him he was satis-

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fied at the close of their statements, that they were made voluntarily. (Currie, J.) Ram Sarup v. Emperor.

139 IC 694 : Ind Rul (1932) Lah 610 : 33 PLR 917 : 33 Cr LJ 847.

——Appellate or High Court — Blind acceptance of recording Magistrate's opinion as to genuineness and truth of confession — Not proper.

The Court of Session or the High Court cannot merely accept the ipse dixit of the Magistrate recording the confession as to its being voluntary. The genuineness and the truth of the confession and the fact of its being voluntarily made are matters which are within the exclusive province of the Court of Session and of the High Court, and neither of them can blindly accept the ready-made opinions of the recording Magistrate on these points without having before it materials from which it could arrive at an independent opinion on these questions. (Raza and Nanavutty, JJ.) Prag v. Emperor.

AIR 1930 Oudh 449 : 6 Luck 335 : 128 IC 215 : 7 OWN 909 : 1930 Cr C 1073 : 32 Cr LJ 97

——S. 164 (3)—Confession—How recorded.

Under S. 164 (3) no confession should be recorded unless upon questioning the person making it, the Magistrate has reason to believe that it is made voluntarily and should refuse to proceed with the recording of the confession until he has had a satisfactory answer to his question. (Chamier, C. J. and Roe, J.) Ragho Laya v. Emperor.

AIR 1917 Pat 322 : 40 IC 721 : 18 Cr LJ 721.

——Ss. 164 (3) and 533—Voluntary confession — Admissibility.

When an accused made a confession before a Magistrate who recorded it and certified that it was not voluntary it was held that it was not admissible in evidence and that the Magistrate when he found it was involuntary, should have refused to record confession. The prosecution could not remedy this defect by calling the Magistrate and examining him as to precise portions which were found to be involuntary, since confession must be read as a whole. (Batchelor and Hayward, JJ.) Emperor v. Rama Dhan Powar.

AIR 1915 Bom 140 : 17 Bom LR 898 : 31 IC 340 : 16 Cr LJ 740.

——Ss. 164, 364—Recording of confession— Duty of Magistrate.

It is the imperative duty of a Magistrate, before recording a confession, to carefully examine the accused person and to the best of his ability ascertain, that he is not wishing to speak owing to any inducement, threat, or promise, but that his confession is purely voluntary. The omission of the Magistrate to question the accused person before recording the confession as to the voluntary nature of it is a fatal defect, that renders

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it inadmissible. (Hartnoll, J.) Shwe Sin v. Emperor.

3 LBR 213 : 4 Cr LJ 477.

4. Confession must be voluntary—

(e) Police influence.

——Confession while in police custody — Evidentiary value of confession.

See Evidence Act (1872), S. 26.

AIR 1953 All 792 : 1953 Cr LJ 1829.

——Length of time of police custody — Evidence Act (1872), S. 24.

The length of time during which an accused person is in police custody before he makes his confession is an important element for the consideration of the Court in reference to the admissibility of the confession. As it is an element for the determination of the voluntary nature of the statement, it is an equally important element for the consideration of the Magistrate who is about to record a confession, so that where he fails to do so despite the accused having been produced from police custody he can hardly be said to have done all that is reasonably necessary to lead him to believe, under S. 164, Criminal Procedure Code, that the confession was being made voluntarily. (Choudhary, J. C.) Vidyamati v. The State.

AIR 1951 Him Pra 82 : 1952 Cr LJ 33.

——Police custody —Accused handcuffed and one constable standing guard on dias when confession recorded by Magistrate — Confession held made under influence of police.

The accused must be free and unhampered at the time when his confession is recorded and should not be subject to the influence of the police.

The accused persons were produced before a Magistrate in the custody of the guard provided by the police. The Magistrate who recorded the confession noted that one constable stood guard on the dias when the confessions were recorded. Two of the accused were handcuffed when their confessions were recorded :

Held, that it was impossible to be sure that the confessions made by the accused persons in these circumstances were not made under the influence of the police: AIR 1937 Lah 409, Rel. on. (Hemeon and Sen, JJ.) Mt. Bhukhin v. Emperor.

AIR 1948 Nag 344 : ILR (1948) Nag 147 : 1948 NLJ 489 : 49 Cr LJ 561.

——Confession under S. 164 must be discarded if the accused, at the time of making it, is actually fettered and has a Policeman on either side of him. (Douglas C. J. and Monroe, J.) Haider v. Emperor.

39 PLR 663 (2).

——Confession made in Police custody.

The amount of weight to be attached to a confession where the accused has never been out of Police custody would depend on the circumstances

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of each particular case. Where there is reason to apprehend that the influence of the Police is still continuing on the mind of the accused, the confession would have little weight and where there is no such apprehension, it may have greater weight. But it is impossible to lay down any definite rule as to the amount of weight that can be attached to such a confession. All that can be laid down is that such a confession is legally admissible in evidence. (Sulaiman C. J.; Kendall and Young, JJ.) Mohammad Ali v. Emperor.

AIR 1934 All 81 : 1933 ALJ 1551 : 56 All 302 : 6 RA 467 : 147 IC 390 : 35 Cr LJ 385 (FB).

——Police influence— Value of statement.

The strict rules laid down by the Criminal P. C., and the High Court for the recording of confession should be strictly followed in every respect. Section 164, Criminal P. C., enacts that the Magistrate must record any statement or confession; 'Recording' means writing down the confession and does not mean merely filing it. The Magistrate should draw the attention of the confessing accused to the fact that there are no Police present while the confession is being recorded, the reason being that there may be less risk that the confession is made under the influence of the Police. If the confession is written down when the accused is under the control of the Police and then handed to the Magistrate, the reason for insisting upon this precaution is destroyed. The law enacts that a confession should be recorded by a Magistrate himself. (Young, J.) Ram Baran Shukla v. Emperor.

AIR 1933 All 356 : 55 All 426 : Ind Rul (1933) All 221 : 1933 ALJ 479 : 143 IC 318 : 34 Cr LJ 574.

——Police influence.

A confession taken by a Magistrate in jail with a Police Officer in the next room, and subsequently retracted, could not be acted upon unless supported by very good corroboration and its evidentiary value as against a co-accused is practically nil. (Agha Haider, J.) Indar Dutt v. Emperor.

AIR 1931 Lah 408 : Ind Rul (1931) Lah 537 : 132 IC 185 : 32 Cr LJ 818.

——A Magistrate has the power, if he has any reason to apprehend that the police are exercising an influence which they ought not to do, to exclude the police or any other person from the Court, during the examination under S. 164. But he is not required to do so by law, and such practice is not desirable as it is likely to lead to the statements, recorded without the help of the police, being incomplete, as only the Police who have investigated the case know all the information which the witnesses are able to give. (Waller and Krishnan Pandalai, JJ.) Gangaboyina Pullamma v. Emperor.

1932 MWN 625.

——Confessional statement recorded by Sub-Magistrate in presence of Sub-Jail Police guard is not

CRIMINAL P. C. (V of 1898), S. 164 — 4. Confession must be voluntary—(e) Police influence

irregular. (Jackson and Cornish, JJ.) Madiga Rayalugadu v. Emperor.

1931 MWN 723.

——Statement recorded in the presence of the Police.

A statement is not properly recorded under S. 164, if a Police Officer is present at the time the statement is made and is allowed to put questions to the witness. Statements of witnesses who do not say anything about the offence, which they profess to have witnessed to anybody till the time of their examination by the Police and who on being questioned previously stated that they knew nothing about it, cannot be relied on. (Martineau, J.) Indersain v. Emperor.

AIR 1920 Lah 144 : 56 IC 210 : 21 Cr LJ 418.

4. Confession must be voluntary—
(f) Presumption.

——Ss. 164 and 364 — Confession — Voluntary character— Presumption — Evidence Act (1872), S. 27.

Where a confession was duly recorded by the Magistrate after observing all the formalities prescribed by Ss. 164 and 364, Cr. P. C., and he purports to have satisfied himself that it was voluntary and to have recorded it after being so satisfied, the presumption is that it was voluntary. (Baxi, J. C.) State v. Waghela Hiranbai Khojati.

AIR 1951 Kutch 92 : 1952 Cr LJ 10.

——S. 164 (3)— Motive for making confession — Confession, when to be presumed to be voluntary.

When the accused makes a confession, the law does not require the motive to be elicited. The only requirement laid down by the law is that the confession should be free from the blemishes of compulsion, inducement, threat or promise. If the recording Magistrate is satisfied that the confession is not tainted by any of these vitiating factors he is entitled to presume that the confession is voluntary. Whether, however, the confession made to him is true or not will be for the trial Judge to decide. (Jagannadhadas and Panigrahi, JJ.) Suka Misra v. The State.

AIR 1951 Orissa 71.

4. Confession must be voluntary—
(g) Threat, inducement or pressure.

——Confession recorded by Magistrate other than to whom requisition was made by police—Delay in recording confession—No pressure upon accused to make confession can be inferred.

From the facts that the confession of the accused was recorded by a Magistrate other than to whom requisition was made by the police and there was delay in recording the confession, no inference can be drawn that pressure was brought to bear upon the accused in the interval to make the confession especially when the accused did not make any grievance about them before the trial

CRIMINAL P. C. (V of 1898), S. 164 — 4. Confession must be voluntary — (g) Threat, inducement or pressure

Court. (Chandrasekhara Aiyar and Kuppuswami Aiyar, JJ.) In re Mariappan.

AIR 1947 Mad 264 : 1946-2 MLJ 128 : 59 MLW 451 : 1946 MWN 663 : 1946 FLJ 101 : 228 IC 153 : ILR (1947) Mad 433 : 48 Cr LJ 89.

——Magistrate asking accused to 'make a detailed statement'— Whether amounts to inducement or threat.

The fact that the Magistrate, while recording a confession, asked the accused to make a detailed statement, does not make the statement resulting from that question any the less voluntary. Such a question cannot be construed as a threat. (Young C. J. and Monroe, J.) Gian Chand v. Emperor.

AIR 1937 Lah 399 : 10 RL 101 : ILR (1937) Lah 481 : 39 PLR 834 : 170 IC 5 : 38 Cr LJ 879.

——Confession — Effect.

Confession should not be encouraged on an inducement of lenient punishment. They simply indicate that the criminal is not irreclaimable and must be properly considered in giving punishment. (Saunders, A. J. C.) In re Nga Kyaw Zan Hla v. Emperor.

AIR 1916 Upp Bur 1 (1) : 2 UBR 113 : 35 IC 962 : 10 Bur LT 76 : 17 Cr LJ 402.

4. Confession must be voluntary—

(h) Rules of practice.

——Madras Criminal Rules of Practice, R. 85 — Rule amplifies provisions of S. 164.

See Madras Criminal Rules of Practice, R. 85.

AIR 1953 Mad 564 : 1953 Cr LJ 1069.

——Omission to comply with the requisites of the Criminal Rules of Practice would not vitiate a confession provided S. 164, Criminal P. C., is complied with.

Where a Magistrate records at the end of the confession that it was voluntary one and does not at the beginning record in writing his reasons for believing that the accused was prepared to make the statement voluntarily as required by R. 85, Madras High Court Criminal Rules of Practice but the perusal of the record shows that the Magistrate did satisfy himself that it was a voluntary confession, and S. 164, Criminal P. C., is complied with, the confession is admissible in evidence even though R. 85 is not strictly complied with. (Burn and Mockett, JJ.) In re Dasi Viraya.

AIR 1938 Mad 490 : 1938 MWN 90 : 47 LW 161 : (1938) 1 MLJ 289 : 10 RM 775 : 175 IC 422 : 39 Cr LJ 585.

——Confession — Recording of — Duty of Magistrate — Fact that some Police Officer at or soon after accused's arrest told him to make confession is no proof of use of force.

It is most unlikely that any accused person of his own accord would ask that his confessional statement should be recorded by a Magistrate. When an accused person makes a statement to the Police, one would expect the Police, as a general rule, to suggest to the accused person that he should make that statement before a Magistrate and it is only after he expresses his willingness to make a statement before the Magistrate that a request is made by the Police to the Magistrate to record the confession. It is then the duty of the Magistrate to remove the accused person from all Police influence, to warn him that his statement will be used against him, to give him time to think over the consequences of such a confession and to satisfy himself that the statement made was a voluntary one. The mere fact that some Police Officer, at or soon after the arrest of the accused, told him to make a confession to the Magistrate, is no proof that he was forced to make the statement. (Mockett and Horwill, JJ.) Kamsala Muneyya v. Emperor.

AIR 1937 Mad 755 : 1937 MWN 537 : 46 MLW 144 : ILR (1938) Mad 348 : 10 RM 643 : 173 IC 1001 : 39 Cr LJ 390.

——Madras Criminal Rules of Practice, R. 85 — Confession—Omission of Magistrate to record reasons for believing that the confession is voluntary and to inform accused that he is not going to be taken as an approver.

Though the rule laid down by R. 85 of the Madras Criminal Rules of Practice, that a Magistrate shall not record any statement or confession until he has first recorded his reasons for believing that the accused is prepared to make the statement voluntarily and until he has explained to the accused that he is under no obligation to answer any question and that it is not intended to make him an approver, is a rule of practice and not a rule of law, it is so obviously based on justice and reason that its non-observance must be regarded as a serious defect and must necessarily have a bearing on the question of the admissibility or, at any rate, the value of the confession and this is all the more so in cases where the case for the prosecution practically rests on the confession. (Pandrang Row, J.) In re Govinda Subbramayya.

AIR 1937 Mad 321 : 45 MLW 93 : 1937 MWN 178 : 10 RM 19 : (1937) 1 MLJ 750 : 169 IC 372 : 38 Cr LJ 753.

5. Confession or statement.

——Confession —Statement of accused not implicating himself is not confession.

See Evidence Act (1872), S. 24.

AIR 1953 All 163 : 1953 Cr LJ 428.

——A confession in order to be admissible under the Evidence Act must either admit the offence or substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact, is not of itself a confession.

See Evidence Act (1872), S. 24.

AIR 1950 Orissa 202 : 51 Cr LJ 1493.

CRIMINAL P. C. (V of 1898), S. 164—5. Confession or statement

——Confession, meaning of — Statement of accused amounts to confession only if he implicates himself.

In order that a statement may amount to a confession, it must state or suggest the inference that the accused had committed the crime. Where the statement of the accused does not assign any part in the crime to himself it cannot amount to confession. (Nawalkishore C. J. and Sukhdeonarain J.) Sarkar v. Leharki.

1947 MLR 8 (a).

——Confession, whether should be believed—Test.

In determining whether the confession is true or false the Court is entitled to take into consideration all the circumstances which may throw light upon the act constituting the offence. If the confession in so far as it affects others is found to be false as regards them that fact may be regarded as throwing doubt upon the rest of it. Where there is no room for any doubt as to the genuineness of the confession arising from the procedure followed or from its contents, the antecedent circumstances may be of material assistance in determining whether the confession should be believed. They may afford substantial support for the belief that it is true, or on the other hand they may be of such a nature as to suggest a doubt. When a few weeks before her murder, a woman writes to the authorities that her life is in danger from a certain person, giving reasons for this apprehension, and when upon a police inquiry her fears are reported to be well-founded, and when shortly after her murder that person is arrested and makes a clear and unequivocal confession, almost boasting of his crime, it is not unreasonable to conclude that that confession is probably true. (Wali Ullah and Bennett, JJ.) Manohar Singh v. Emperor.

AIR 1946 All 15 : 222 IC 538 : ILR (1946) All 111 : 1945 All W R (HC) 291 : 1946 All LJ 77 : 47 Cr LJ 311.

——If governed by Evidence Act.

Obiter.—Statements under S. 164, Criminal P. C., are as much governed and controlled by the Evidence Act as are other statements which are to be proved or are recorded in Court. (Davis, C. J. and Tyabji, J.) Ali Gohar v. Emperor.

AIR 1941 Sind 134 : ILR (1941) Kar 292 : 14 RS 52 : 196 IC 61 : 42 Cr LJ 805.

——Practice of getting witnesses examined under S. 164, how far justified.

No doubt the fact that the Police have considered it necessary for the statement of a witness to be recorded under S. 164, Cr. P. C., suggests that they do not consider him altogether a reliable witness; that is to say, they apprehended that he may be tampered with. But there is no objection to the procedure being followed in appropriate cases. Village witnesses are peculiarly susceptible to local influences. Where all of the persons

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accused in the first information report have disappeared from the village immediately after the occurrence, it is by no means improbable that some attempt would be made by one or more of them to tamper with the witnesses while the accused are still at large. There is no objection in these circumstances to the Police sending the witnesses to have their statements recorded by the Magistrate under S. 164. The precaution is a very natural one. It is the only legal method by which the statements made by the witnesses at an early stage in the investigation can afterwards be proved at the trial by the prosecution, and then only for the purpose of corroboration. But it does no doubt help to deter witnesses from changing their stories subsequently and to this extent its effect is salutary. (Bennett and Ghulam Hasan, JJ.) Parmeshwar Din v. Emperor.

AIR 1941 Oudh 517 : 1941 OWN 981 : 14 RO 110 : 1941 AWR 265 : 195 IC 630 : 42 Cr LJ 758.

——Witness sticking to statement made by him throughout—Mere fact that his statement was previously recorded under S. 164, if sufficient to discard it.

Section 164, Cr. P. C., cannot be rendered nugatory by the stock argument that if the statement of a witness is recorded under S. 164, the evidence of the witness should be discarded. If a statement of a witness is previously recorded under S. 164, it leads to an inference that there was a time when the Police thought the witness might change but if the witness sticks to the statement made by him throughout, the mere fact that his statement was previously recorded under S. 164, will not be sufficient to discard it. The Court, however, ought to receive it with caution and if there are other circumstances on record which lend support to the truth of the evidence of such witness, it can be acted upon. (Gruer and Puranik, JJ.) Parmanand Ganga Prasad v. Emperor.

AIR 1940 Nag 340 : 1940 NLJ 459 : 13 RN 148 : ILR (1941) Nag 110 : 190 IC 849 : 42 Cr LJ 17.

——Admission of incriminating facts by accused to Magistrate under S. 164 or to Court during trial —Admissibility under Ss. 18 to 21, Evidence Act.

Considerations which attach to the question of the admissibility of a confession made under S. 162, Cr. P. C., are different from the considerations which attach to a confession made before a Magistrate. The protective provisions of S. 162, which apply to statements by accused persons to the Police, or at least to accused persons who are at first witnesses, have their origin in the infirmities which, it is believed, may affect the evidence of the Police in India as to statements made by accused persons. Such considerations are obviously not applicable to statements made to Magistrates either under S. 164 or S. 342. An admission

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of incriminating facts made by an accused person to a Magistrate under S. 164, or a statement made to the Court during the course of the trial is admissible in evidence for what it is worth against the person who makes it under Ss. 18 to 21, Evidence Act. (Davis J. C. and Lobo, J.) Allahwarayo Daryakhan v. Emperor.

AIR 1940 Sind 53 : ILR (1939) Kar 800 : 12 RS 250 : 187 IC 576 : 41 Cr LJ 477.

——Ss. 164, 337—Approver.

In recording a statement after an acceptance of pardon, the Magistrate has the power of administration of oath or solemn affirmation under S. 164, Cr. P. C. The proper procedure then to be followed by a Magistrate is to record the statement of the approver immediately after, and not before tendering pardon. A statement so recorded is clearly admissible in evidence under S. 339 (2). (Niyogi and Gruer, JJ.) Horilal v. Emperor.

AIR 1940 Nag 218 : 1940 NLJ 286 : 12 RN 283 : ILR (1941) Nag 372 : 187 IC 203 : 41 Cr LJ 433.

——Statement under S. 164 — Whether raises suspicion that it is not voluntary.

A statement of a witness obtained under S. 164, Cr. P. C., always raises a suspicion that it has not been voluntarily made. The section was not intended to enable the Police to obtain a statement from some person and, as it were, to put a seal on that statement by sending in that person to a Magistrate practically under custody, to be examined before the judicial inquiry or trial, and therefore, compromised in his evidence, when judicial proceedings are regularly taken. (Dhavle and Chatterji, JJ.) Emperor v. Manu Chik.

AIR 1938 Pat 290 : 4 BR 626 : 11 RP 11 :175 IC 716 : 39 Cr LJ 635.

——"Statement", whether includes statement by accused — Use of such statement against accused.

The word 'statement' in S. 134, Cr. P. C. is not limited to a statement by a witness but includes that made by an accused and not amounting to a confession. Where the statement of the accused is validly recorded as such, there is no impediment in strict law to its use against him in the capacity of an accused. At the same time, the procedure of taking a statement on oath as from a witness and then using it at a later stage against an accused is not one which commends itself and this would be a reason for rejecting the statement on its merits. (Grille and Gruer, JJ.) Karu v. Emperor.

AIR 1937 Nag 254 : 20 NLJ 103 : 9 RN 285 : ILR (1937) Nag 524 : 168 IC 976 : 38 Cr LJ 648.

——Confession — There must be animus confitendi.

It is only when the utterance is made with an animus confitendi that it would become a confession. If, therefore, the declaration is made neither with an intention to confess, nor does it amount to an admission of facts from which guilt

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is directly deducible, the declaration would not be a confession. (Grille and Gruer, JJ.) Karu v. Emperor.

AIR 1937 Nag 254 : 20 NLJ 103 : 9 RN 285 : ILR (1937) Nag 524 : 168 IC 976 : 38 Cr LJ 648.

——Person accused of theft — Confession — Dishonest intention not admitted — Record of statement not complete — Statement, held should not be relied on as a confession either in form or substance. (Varma, J.) Rama Sakhia v. Emperor.

AIR 1934 Pat 651 : 15 PLT 586 : 7 RP 385 : 1 BR 237 : 153 IC 922 : 36 Cr LJ 447.

——Ss. 164, 476, 476(B) — False statement made, when one 'in relation to a subsequent trial'—Appeal to Sessions Judge—Power of Sessions Judge to dismiss appeal summarily.

A statement under S. 164 is one made in relation to a case which is subsequently tried on that matter even though the Court which tried the case did not record the statement.

The petitioner was thrown out of a car in an accident and injured. Another person was also injured and he subsequently died. The Sub-Divisional Magistrate recorded a statement under S. 164, Cr. P. C., from the petitioner wherein he stated that the driver of the car was A. It was found on enquiry that the driver was B and B was convicted in respect of the death of the petitioner's co-passenger. The Sub-Divisional Magistrate made a complaint against the petitioner under S. 473 and the Sessions Judge dismissed an appeal thereupon summarily on revision:

Held (i) that the Sessions Judge had the power to dismiss the appeal summarily;

(ii) that the statement made by the petitioner under S. 164 was one in relation to the proceeding before the Sub-Divisional Magistrate and the Sub-Divisional Magistrate had jurisdiction to make the complaint. (Sundaram Chetty and Pakenham Walsh, JJ.) A. T. Krishnamachari v. Emperor.

AIR 1933 Mad 767 : 65 MLJ 534 : 1933 MWN 902 : 38 MLW 564 : 6 RM 392 : 147 IC 794 : 35 Cr LJ 503.

——Ss. 164, 339 — Approver accepting tender of pardon — Whether can be examined under S. 164.

In a criminal case once the approver has accepted a tender of pardon he stands on the same footing as any other witness with the exception that he is liable to forfeit his tender of pardon if he does not comply with the conditions on which the tender was made.

There is no legal bar to the examination of any other witness under S. 164, Cr. P. C., and there is no reason why the examination of the approver under S. 164 should be open to any objection. (Abdul Rashid, J.) Emperor v. Hussina.

AIR 1933 Lah 868 : 6 RL 230 : 146 IC 461 : 35 Cr LJ 111.

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——Statements made during the course of an investigation under S. 164, Criminal P. C., into an offence of murder, which is triable only by a Sessions Court, must be held to be "in relation to" the trial in that Court within S. 473, Criminal P. C. (Burn J.) Maromma v. Emperor.

AIR 1933 Mad 125 : Ind Rul (1933) Mad 43 : 1933 MWN 100 : 140 IC 756 : 34 Cr LJ 92.

——Ss. 164, 364—Confession, during trial recorded according to law — Evidence Act, S. 30.

A confessional statement made by an accused person is a confession proved within the meaning of S. 30, Evidence Act, whether made before trial or during trial provided that it is recorded according to law. (Staples, A. J. C.) Ganpat v. Emperor.

AIR 1931 Nag 169 : 27 NLR 163 : Ind Rul (1931) Nag 174 : 134 IC 686 : 32 Cr LJ 1222.

——Accused pointing places of incidents—Notes by Magistrate at the time not a confessional statement.

Notes made by Magistrate while the accused pointed out several places to him could not be treated as evidence of confession of the accused to Magistrate. The notes do not purport to be a record of the confessional statement by the approver or the other arrested persons, nor do they pretend to comply in any way with the provisions of S. 164. They are not in the form of questions and answers nor do they record even in a narrative form what each individual accused is supposed to have stated to the Magistrate. It is not mentioned in the notes nor is it deposed to orally by the Magistrate, that when an accused was brought before him, he satisfied himself that the former was going to make a statement voluntarily, nor was any attempt made to explain to him that his statement might be used as evidence against him. They were no more than a record of the proceedings of the Magistrate during the investigation and could not be admitted in evidence as a record of a confessional statement made by the accused. (Tekchand, J.) Baghet Singh v. Emperor.

AIR 1929 Lah 794 : 121 IC 497 : 1929 Cr C 426 : 31 Cr LJ 269.

——Self-exculpatory statements of accused.

The word "Statement" in S. 164, Cr. P. Code is not limited to a statement by a witness but includes that made by an accused and not amounting to a confession. Where the statements though of a somewhat incriminating nature, are self-exculpatory and were duly recorded in accordance with the provisions of S. 164, they can be rightly admitted in evidence. 2 CWN 702, Dist., AIR 1922 Cal 342, Foll. (Newbould and B. B. Ghose, JJ.) Abdul Rahim v. Emperor.

AIR 1925 Cal 926 : 88 IC 1055 : 41 CLJ 474 : 26 Cr LJ 1279.

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6. Confession to Magistrate of foreign state.

——Ss. 164, 533 — Confession recorded in Gwalior State — Admissibility in British India — No certificate under S. 164 (3) — Effect on admissibility —Defect, if curable under S. 533 (1).

A confession recorded in Gwalior State under S. 79 of the Criminal P. C. in force there, can be used in British India under the provisions of S. 80, Evidence Act.

For the admissibility of such confession, there need not be a certificate introduced in S. 164 (3) by the Amending Act, XVIII of 1923, since S. 29, Evidence Act was not amended. Moreover, any defect in recording such confession is curable under S. 533 (1) provided the accused is not prejudiced. (Bennet and Verma, JJ.) Lal Singh v. Emperor.

AIR 1938 All 625 : 1938 ALJ 943 : 1938 AWR 642 : 11 RA 327 : ILR (1938) All 875 : 178 IC 694 : 40 Cr LJ 132.

——Magistrate in Native State — Confession to such Magistrate — Admissibility.

A Magistrate in a Native State is not a Magistrate for the purpose of S. 164, Criminal P. C., even though certain or all the provisions of the Criminal P. C., have been incorporated by the Native State in its own laws and regulations. A confession made to a Magistrate in such a Native State, though not recorded according to the provisions of S. 164, Criminal P. C., is admissible as an extra-judicial confession. (Ferrers J. C. and Aston, A. J. C.) Muhammad Bux v. Emperor.

AIR 1934 Sind 103 : 7 RS 50 : 151 IC 311 (2) : 35 Cr LJ 1328.

——Confession before Third Class Magistrate of Indian State — Admissibility — Evidence Act, S. 23.

Where a confession was voluntarily made and the necessary certificate was appended by the Magistrate who was called in the trial and gave evidence, the mere fact that the confession was made before a Magistrate of the Third Class in an Indian State does not render the confession inadmissible in evidence. Magistrates of a foreign nationality are not intended to be excluded, and there is nothing in the Criminal P. C., or the Evidence Act to exclude a confession made before them. (Young and Bennet, JJ.) Emperor v. Hulasi.

AIR 1933 All 286 : Ind Rul (1933) All 392 : 144 IC 157 : 34 Cr LJ 704.

——Confession made out of British India — S. 164 not complied with — Admissibility of confession.

A confession made outside British India cannot be rejected merely because the provisions of S. 164, Criminal P. C., were not complied with. All that has to be seen in such a case is that there is nothing against the substantive law or natural

CRIMINAL P. C. (V of 1898), S. 164—6. Confession to Magistrate of Foreign State

law to vitiate it. (Addison J.) Bhan Singh v. Emperor.

AIR 1932 Lah 367 : Ind Rul (1932) Lah 323 : 34 PLR 449 : 137 IC 196 : 33 Cr LJ 460.

——Confession to the Magistrate of a Native State and written down by his Munshi — Admissibility of — Irregularity, if can be cured.

A confession made to a Magistrate in a Native State is admissible in evidence in a trial in British India, if it is duly recorded in the manner required by the Code. Merely because the provisions of the Code have not been in every respect strictly observed in the State does not make the confession inadmissible, provided that the accused had not thereby been prejudiced on the merits and that the fact that the accused made the statement is proved by evidence. The mere fact that the statement was actually written by the Munshi and not by the Magistrate himself, does not in any way prejudice the accused in his defence on the merits. But a confession so recorded is not entitled to the same weight as would be a confession recorded by a British Magistrate in strict compliance with the terms of the Code. Courts should hesitate to convict the accused upon such a confession standing alone. Although the terms of Ss. 134 and 364, are to be strictly observed, such a defect can be cured by examining the Magistrate as provided for in S. 533. (Robertson and Rattigan, JJ.) Badan Singh v. King-Emperor.

2 PR 1909 Cr : 1 Ind Cas 444 : 7 PWR 1909 Cr : 9 Cr LJ 297.

7. Copies.

——Where a case has been taken on the file and is being tried, there ought to be no objection to the granting of a copy of a statement recorded under S. 164, Criminal P. C., as it is necessary for the cross-examination of the witness. (Kuppuswami Ayyar, J.) In re Mathayan.

AIR 1945 Mad 85 : 57 LW 550 (1) : (1944) 2 MLJ 306 : 1944 MWN 686 (1) : 218 IC 104 : 46 Cr LJ 417.

——Right of Pleaders to see record of statement made by prosecution witnesses under S. 164, Cr. P. C. (Act V of 1898) or to cross-examine them thereon — Refusal of Court to allow defence to see record of statement made by prosecution witnesses under s. 164.

It is an elementary principle of natural justice that an accused person shall have free access at any time during the trial to all the records which are before the Court. The same considerations apply to the refusal to permit reference in cross-examination to the contents of the charge-sheet, for, this also forms part of the committal record. The defence Pleaders should be allowed to see the records of statements made by the prosecution witnesses to a Magistrate under the provisions of S. 164, Criminal P. C. or to cross-examine the witnesses thereon.

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Where the Judge declined to grant all these privileges to the defence:

Held, that this created an apprehension in the mind of the accused that he would not get the fair trial and hence the case should be transferred. (Roberts, C. J. and Dunkley, J.) Brahmaya v. The King.

AIR 1938 Rang 442 : 11 R Rang 347 : 179 IC 783 : 40 Cr LJ 265.

——Accused, if entitled to.

The statements recorded under S. 164, Criminal P. C., are public documents within the meaning of S. 74, Evi. Act. That being so, the accused is entitled to copies of these documents, and where the Magistrate refuses to grant them to the accused, he is in error. (Rupchand J. C. and Lobo, A. J. C.) Bherumal Khanchand v. Emperor.

AIR 1937 Sind 303 : 10 RS 134 : 171 IC 993 : 39 Cr LJ 57.

——Magistrate to afford all facilities to accused.

An accused person is entitled to inspect statements of prosecution witnesses recorded under S. 164, Criminal P. C. Such statements can be used by the prosecution for the purpose of corroborating the witnesses. They can likewise be used by the defence for the purpose of contradicting such witnesses. (Niamatullah, J.) Bashir-ud-din v. Emperor.

AIR 1932 All 327 : Ind Rul (1932) All 554 : 139 IC 330 : 33 Cr LJ 752.

——S. 164 (2)— Statements recorded during investigation—Accused's right to inspect and take copies.

Under S. 164 (2), Criminal P. C., it is the imperative duty of a Magistrate who records any statement made to him during the course of an investigation under Chap. XIV of the Code or at any time before the commencement of the enquiry or trial to forward such statement to the Magistrate by whom the case is to be enquired into or tried, and when such statement has been received by the Magistrate by whom the case is to be inquired into or tried, it must be placed on the judicial record. There is no provision in the Code, that these statements are confidential documents and must not be placed by the enquiring or trying Magistrate on his record, nor is there any prohibition against their being inspected by the accused or copies thereof taken by them before the witnesses concerned have been examined-in-chief. (Tekchand, J.) Hari Chand v. Emperor.

AIR 1931 Lah 59 : Ind Rul (1931) Lah 129 : 129 IC 193 : 32 Cr LJ 253.

——The order of the Magistrate refusing to grant copies of the statements recorded under S. 164 of such witnesses as were to appear at the trial, is wrong. 30 Mad. 436; AIR 1925 Lah 605 and

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AIR 1926 Lah 122, Dist. (Skemp, J.) Ghulam Nabi v. Emperor.

AIR 1929 Lah 429 : 117 IC 377 : 30 Cr LJ 760.

——Right of accused to have copies of statements recorded by magistrate.

See ibid, S. 162.

6 Cr LJ 346 (Mad).

8. Defects in recording.

See also (1) Note 10. Effect of non-compliance.
(2) Criminal P. C., S. 533.

——Ss. 164 and 163 — Mode of recording confessions — (High Court Rules and Orders — Madras Criminal Rules of Practice, Rr. 84, 85).

Held in the circumstances of the case that the infirmities viz., that the Magistrate did not disclose himself as a Magistrate to the deponents; secondly, that the confessions were not recorded in open court and during court hours; and thirdly that none of the deponents was warned that it was not intended to take him as an approver, either singly or cumulatively did not vitiate the confessional statements recorded in the case. (Reasons for the Rules set out.) Case law reviewed. (Ramaswami, J.) In re Buttu Musalayya.

66 Mad LW 777.

——Ss. 164 and 533 — Irregularities in recording confession —Irregularities held fatal to admissibility of confession at trial. (Radke, A. J. C.) Ghasi Ram v. State.

AIR 1952 Bhopal 25 : 1952 Cr LJ 1366.

——Ss. 164 and 364— Confession not recorded in form of questions and answers— Admissibility — Criminal P. C. (1898) S. 364.

Section 164 does not require confessions to be recorded in the form of questions and answers. Confession recorded by a Magistrate in a narrative form and not in the form of questions and answers is not, therefore, inadmissible in evidence. (Mohd. Munir C. J. and Shabir Ahmad, J.) Wali Muhammad v. Crown.

Pak Cas 1950 Lah 393 : Pak LR 1950 Lah 335.

——Reliance on defective confession as being voluntary.

Where a Magistrate recorded a confession in presence of a number of other persons, and this confession was recorded on a printed form and did not bear a signature or thumb mark of the accused, nor did the Magistrate sign the English version of the confession, these defects, within the meaning of S. 364, Criminal P. C., were such that not the slightest reliance could be placed on this confession as being voluntary under S. 164. (Stone, C. J. and Lokur, J.) Bhimappa Saibanna v. Emperor.

AIR 1945 Bom 484 : 1946 Bom Rul 87 : 47 Bom LR 648 : 222 IC 143 : 47 Cr LJ 252.

——Ss. 164, 533— Mere omission to take accused's signature to statement — Defect, if cured under S. 533.

CRIMINAL P. C. (V of 1898), S. 164—8. Defects in recording

In recording confessions no other procedure than that which has been detailed in the Criminal P. C., can be followed, but the mere omission to take the accused's signature to a statement made under S. 164, Criminal P. C., is not necessarily fatal to the admissibility of the statement in every case. The defect is cured under S. 533. The signature is not taken as a proof of the accuracy of the statement to which it is appended but in proof of the fact that the statement was actually made ; where, therefore, not only has the Magistrate given evidence to show that the statement was made as recorded by him, but the accused himself has admitted that he made this particular statement, there can be no possible prejudice to the accused in giving proof that the statement actually was made. (Grille and Bose, JJ.) Samla Hardeo Teli v. Emperor.

AIR 1941 Nag 17 : 13 RN 196 : ILR (1941) Nag 104 : 1940 NLJ 497 : 191 IC 300 : 42 Cr LJ 117.

——Ss. 164, 533—Accused not prejudiced — Defects are cured under S. 533.

Defects in recording confession by a Magistrate under S. 164, Criminal P. C., are cured under S. 533, provided that the accused has not been prejudiced by them. (Almond J. C. and Mir Ahmad, J.) Kishan Chand Kewal Ram v. Emperor.

AIR 1938 Pesh 5 : 10 R Pesh 64 : 1938 Pesh LJ 8 : 174 IC 449 : 39 Cr LJ 448.

——Confession — Recording of — Manual of Government Orders, Vol. 1, Department VI, para. 853-A—Omission to comply with, in full—Confession, if becomes invalid.

Where, in recording a confession, it appears that, though the Magistrate had complied with the provisions of S. 164, Criminal P. C., and the confession bore at the foot of it the memorandum required by that section, he had not complied in full with the direction with 'regard to the recording of confessions contained in para. 853-A of the Manual of Govt. Orders, Vol. I, Department VI p. 186 :

Held, that although it was very desirable that those instructions should be carried out to the letter and that every question put in accordance therewith and the answer given by the confessing person should be recorded by the Magistrate, the omission to do so did not invalidate the confession as a piece of evidence. (Bisheshwar Nath and Kisch, JJ.) Sahaj Ram v. Emperor.

AIR 1933 Oudh 313 : 10 OWN 461 : 6 RO 127 : 146 IC 449 : 35 Cr LJ 7.

——Effect of.

Where the confession of the accused was not taken down in the language in which it was made but in English and it was not signed or thumb-marked by the accused, but the evidence given by the Magistrate in Court showed that the confession was made voluntarily and correctly recorded:

CRIMINAL P. C. (V of 1898), S. 164—8. Defects in recording

Held, that the irregularities in recording the confession were not material. (Bhide and Tapp, JJ.) Nanak Chand v. Emperor.

AIR 1932 Lah 73 : Ind Rul (1931) Lah 785 : 32 PLR 792 : 133 IC 545 : 32 Cr LJ 1036.

——Where a Magistrate recorded a confession on Sunday at his house and in the English language and did not record the questions and answers but stated on oath as a witness that he had satisfied himself that accused was making the statement voluntarily :

Held, that these were mere irregularities and as no prejudice had been shown to have been caused to accused, the confession which was genuine and voluntary was admissible in evidence. (Harrison and Dalip Singh, JJ.) Abdul Ghani v. Emperor.

AIR 1931 Lah 763 : Ind Rul (1931) Lah 727 : 133 IC 55 : 32 Cr LJ 985.

——Ss. 164, 364 and 533— Record of confession — Procedure — Language and form of record — Defects in.

It is not absolutely necessary for a Magistrate recording the confession of an accused person to put down all the questions put by him to the accused, if such questions were merely formal. The confession is not rendered inadmissible, if the accused has not been prejudiced, merely because it is taken down in narrative form. The irregularity, if any, is cured by the examination of the Magistrate, under S. 533, Cr. P. Code. It is not necessary for the Magistrate to warn the accused that he was speaking to a Magistrate if from the circumstances of the case, the accused must have known that he was speaking before one. S. 164, Cr. P. Code, absolutely prohibits the employment of a Police officer to take down the confession of an accused person. A Police officer cannot be employed even as a scribe to take down such a confession. The statement of the Magistrate in his examination under S. 533 must be taken as conclusive that it was impracticable to record it in the language in which it was made. It is not absolutely illegal to take the signature of the accused to his confession immediately after it is recorded. (Bell and Ryves, JJ.) Khudiram v. Emperor.

9 CLJ 55 : 3 IC 625 : 10 Cr LJ 325.

——Statement of witness in the absence of accused.

There is no irregularity—in recording a statement of a witness under S. 164 without calling the accused. (H. D. Rendall) In re Maretha Balu Dolatram.

17 KLR 346 : 7 Cr LJ 166.

——Accused able to write— Thumb impression is not signature — Act X of 1897 (General Clauses), S. 3, Cl. 52.

Under S. 3, Cl. 52 of the General Clauses Act, a mark is to be considered a signature only in the case of a person unable to write his name.

CRIMINAL P. C. (V of 1898), S. 164—8. Defects in recording

Where an accused person, is able to write, his confession not signed by him, but having a thumb mark, is not a valid confession under S. 164. (Henderson and Geidt, JJ.) Sadananda Pal v. Emperor.

32 C 550 : 2 Cr LJ 405.

9. Dying declarations.

——Dying declaration to Magistrate not authorised to record it — Declaration must be proved — Presumption under S. 80, Evidence Act — Declaration when would be admissible under S. 32 Evidence Act (I of 1872).

Where a statement is relevant under the provisions of S. 32 (1), Evidence Act, it is not inadmissible by reason of the fact that the Magistrate who recorded it was not competent to record a statement of a witness under S. 164, Criminal P. C. Hence a dying declaration made to a Magistrate is not inadmissible because the Magistrate was not empowered under S. 164 to record it as it was not made in the course of investigation under Chap. XIV, Criminal P. C.

But the dying declaration has to be proved, for, it is not a record of the evidence given by a witness before an officer authorised by law to take such evidence. Therefore, the presumption mentioned in S. 80, Evidence Act, cannot arise. But even if the dying declaration is made in the course of investigation under Chap. XIV, it would be admissible under S. 32, Evidence Act. (Mosely, J.) Sulaiman v. The King.

AIR 1941 Rang 301 : 1941 Rang LR 258 : 14 R Rang 110 : 197 IC 131 : 43 Cr LJ 123.

——Dying declaration, recording of — Accused making confessional statement— Duty of Magistrate to convey warning.

When a Magistrate proceeds to record a dying declaration, the moment it becomes clear from the accused's answers to his questions that he is incriminating himself, the Magistrate should at once pause and inform him that he is not bound to make a confession and should satisfy himself, by further questions that the confession is being made voluntarily. (King, J.) Vadde Rampuri v. Emperor.

1937 MWN 1325.

——Dying declaration—Accused examined in hospital when he was wounded—Accused not charged with any offence—Statement not read over to him —No enquiry under Chap. XIV, Criminal P. C.— No certificate under S. 164, Criminal P. C.—Statement, held, could not be used as a confession and hence it was not admissible in evidence under any provision of Evidence Act or Criminal P. C. (Nanavutty, J.) Hari Krishna v. Emperor.

AIR 1935 Oudh 477 : 8 RO 6 : 11 Luck 327 : 1935 OWN 781 : 156 IC 819 : 36 Cr LJ 1007.

——Dying declarations are relevant in cases in which the cause of death of persons making them comes into question, even if they were recorded

CRIMINAL P. C. (V of 1898), S. 164 — 9. Dying declarations

by a Magistrate of second class, who was not empowered under S. 164, Criminal P. C., to record statements of witnesses. (Addison and Abdul Qadir, JJ.) Rahman v. Emperor.

AIR 1932 Lah 14 : 33 PLR 8 : Ind Rul (1931) Lah 885 : 134 IC 117 : 32 Cr LJ 1118.

10. Effect of non-compliance—Ss. 164 and 533.

See also Note 8 : Defects in recording.

——Ss. 164 and 364—Non-compliance of —Accused produced from police custody for recording confessions — Confessions recorded from day to day and accused remaining in police custody throughout—Precautions and safeguards laid down in Ss. 164 and 364 not followed — No memorandum at foot of each confession as laid down in S. 164 (3)—Confessions must be rejected from evidence—Oral evidence of Magistrate that they were voluntary will not cure the defect —(Evidence Act (1872), S. 24.) (Shinde C. J. and Chaturvedi, J.) Aliya v. State.

AIR 1953 Madh B 87 : 1953 Cr LJ 610.

——S. 134 (3)— Substantial non-compliance of — Effect — Evidence Act (1872), S. 26.

Per Full Bench.—Where the requirements of S. 164 (3) have not been substantially complied with, what purports to be the confessional statement, cannot be treated as a validly recorded confession under S. 164 which could be brought in under S. 26, Evidence Act, and it must, therefore, be disregarded.

Where in fact there has been no adequate explanation or questioning by the Magistrate of the nature prescribed in S. 164 (3) before he starts recording the confession, his record of the confession cannot be said to be in substantial compliance with the requirements of S. 164 (3) and no evidence aliunde that the confession was in fact voluntarily made would be admissible. Such a confession vitiated by substantial non-compliance, with the provisions of S. 164 (3) is not a valid record of the confession and cannot, therefore, be made use of under S. 26, Evidence Act. There is thus no scope for invoking the aid either of S. 29, Evidence Act, or S. 533, Criminal P. C., to cure such defect. (Ray C. J., Jagannadhadas and Narasimham, JJ.) Bala Majhi v. State of Orissa.

AIR 1951 Orissa 168 : ILR (1951) Cut 65 : 1952 Cr LJ 1743 (FB).

——Irregularities in recording confession—Defects when will be cured.

See ibid, S. 533.

AIR 1949 Lah 235 : 51 Cr LJ 126.

——S. 164 (3)—Recording of confession—S. 164 (3) not observed—No enquiries as to voluntary nature of confession made—No questions put—Form prescribed by High Court not followed —Government directions in the matter not observed—Confession held inadmissible. (Abdur Rahman, Ag. C. J. and Mohammad Khurshid Zaman, J.) Mt. Bakhat Bano v. The Crown.

CRIMINAL P. C. (V of 1898), S. 164 — 10. Effect of non-compliance—Ss. 164 & 533

AIR 1949 Lah 235 : Pak LR (1948) Lah 282 : Pak Cas 1950 Lah 52 : 51 Cr LJ 126.

——Non-compliance with Ss. 164 and 364—Defect not remedied under S. 533— Record of confession is inadmissible.

Where there is nothing on the record to show that the Magistrate even did question the accused to ascertain that he was making his confession voluntarily the provisions of Ss. 164 and 364 are not complied with and when the defect has not been remedied by the Magistrate's evidence under S. 533, the record of the confession is inadmissible. (Roxburgh and Majumdar, JJ.) Ondi Boro v. Emperor.

AIR 1948 Cal 193 : 49 Cr LJ 294.

——Ss. 164, 364—Non-compliance — Effect.

A confession to a Magistrate during course of investigation must be recorded in a proper form and the formalities and precautions required by Ss. 164 and 364 must be strictly observed. If this is not done, the confession becomes inadmissible. (Davis C. J. and Lobo, J.) Sharif v. Emperor.

AIR 1944 Sind 113 : ILR 1943 Kar 371 : 17 RS 16 : 213 IC 317 : 45 Cr LJ 704.

——Ss. 134, 364, 533—Accused produced before Magistrate for remand making statement admitting guilt — Magistrate recording statement without complying with provisions of Ss. 164 and 364 — Magistrate examined as witness.

In cases where a Magistrate has made no attempt to comply with the requirements of Ss. 164 and 364, Criminal P. C., in recording the confession of an accused person, such a confession is not admissible in evidence. Where such an attempt has been made, but there is a formal defect in the procedure thereof, then it will become curable under S. 533, Criminal P. C.

Hence, where the accused when produced before a Magistrate for remand, makes a statement admitting that he had committed the crime and the Magistrate is examined as a witness in the trial, the statement is inadmissible in evidence if the Magistrate who had recorded the statement had made no attempt to comply with the provisions of Ss. 134 and 364, Criminal P. C. (Ba U J.) King v. Saw Min.

AIR 1939 Rang 219 : 1939 Rang LR 97 : 12 R Rang 25 : 182 IC 705 : 40 Cr LJ 691.

——Confession recorded without questioning accused as to its voluntary nature—Defect is not curable under S. 533, Criminal P. C.—Such confession is inadmissible under S. 80, Evidence Act— Such confession however can be proved as admission under S. 21, Evidence Act — Magistrate can use such irregularly recorded confession to refresh his memory while proving confession as admission under S. 21.

CRIMINAL P. C. (V of 1898), S. 164—10. Effect of non-compliance—Ss. 164 & 533

Where the Magistrate does not comply with one of the requirements of S. 164, Criminal P. C., namely, that a confession shall not be recorded unless upon questioning the person making it, the Magistrate has reason to believe that it was made voluntarily, this defect cannot be cured under S. 533, Criminal P. C., because the confession cannot be said to have been 'duly made', viz., in accordance with law. The record of the confession cannot, therefore, be admitted in evidence under S. 80, Evidence Act. The consequence of non-compliance with the provisions of S. 164 is that the record of the confession cannot be admitted in evidence under S. 80, Evidence Act, without further proof. The admissibility of evidence is however governed by the Evidence Act; and under S. 21 an oral confession by an accused person is relevant subject to the provisions of Ss. 24 to 29. The confession must, in such a case, be proved by the testimony of the Magistrate who heard it. If he did not record it at all, he would obviously have to rely on his memory alone. If he did record it, but not in accordance with law and consequently the record is rendered inadmissible under S. 80, he can still use it to refresh his memory when in the witness box. The adverse party can then call upon him to produce the document and cross-examine him thereupon. If the confession was read out to the accused and was admitted by him to be correct and was also signed by him, it can perhaps be regarded as a confession in writing and can be proved by the prosecution under S. 21, Evidence Act. (Young, C. J. and Rangi Lal, J.) Bakshan v. Emperor.

AIR 1936 Lah 247 : 16 L 912 : 37 Cr LJ 432.

(Overruled in AIR 1936 P. C. 253 (2) : : 37 Cr LJ 897).

——Rejection on technical ground, propriety of.

Obiter.—Where a confession is made in circumstances that preclude all suspicion of undue influence, it would be unfortunate if it is necessary to decide against admitting it merely on some technical ground or because the rule for recording confessions had not been strictly followed. (Kendall, J.) Naubat Singh v. Emperor.

AIR 1935 All 653 : 8 RA 179 : 1935 AWR 801 : 157 IC 354 : 36 Cr LJ 1139.

——Ss. 164, 364—Magistrate not strictly complying with the requirements of the sections— Whether can be cured under S. 533.

The defect of not strictly complying with the requirements of the provisions of Ss. 164 and 364, Criminal P. C., can be cured by the examination of the Magistrate who has recorded the confession if he swears that he has followed what is required by law. Where the Magistrate swears that before he recorded the statement of the accused, he satisfied himself that he was making it voluntarily and he warned the accused that it would be taken in evidence against him and that he himself was a Magistrate, the confession is admissible. (Broadway, Actg. C. J. and Abdul Qadir, J.) Bala Udmi v. Emperor.

AIR 1934 Lah 18 : 7 RL 189 : 151 IC 745 : 35 Cr LJ 1382.

——Ss. 164 and 533 — Provisions of S. 164 are mandatory—Failure to observe S. 164 —Court can take oral evidence to prove that confession was 'duly made' provided accused is not injured — Questions not put at all— Confession is not 'duly made'—Still it is not irrelevant —Court may take evidence and satisfy that there was no inducement, etc. within Evidence Act, (1872), S. 24.

No doubt the provisions of S. 164 are imperative and mandatory, and it is the duty of every Magistrate to follow these provisions strictly, and if he fails to do so he would be failing in the discharge of his duty. But the Court can admit the statement by calling oral evidence to prove that the statement had in fact been 'duly made'; unless the error has injured the accused as to his defence on the merits. If the questions are not put at all, the confession is not 'duly made.' But it is not necessarily irrelevant. The Court may satisfy itself that there was no inducement etc., and so fulfil the requirements of S. 24, Evidence Act, although it may have to take evidence to satisfy itself on this point: (Sulaiman, C. J., Kendall and Young, JJ.) Mohammad Ali v. Emperor.

AIR 1934 All 81 : 56 All 302 : 35 Cr LJ 385 (FB).

(Impliedly overruled in AIR 1936 P. C. 253 (2) 37 Cr LJ 897).

——Ss. 164, 533—Defect if cured by S. 533.

Under S. 533, Criminal P. C., non-compliance with the provisions of S. 164 can only be cured if the error or errors committed by the Magistrate in recording the confession has or have not injured the accused as to his defence on the merits. (Nanavutty and Smith, JJ.) Daulat Ram v. Emperor.

AIR 1933 Oudh 315 : 10 OWN 466 : 6 RO 129 : 8 Luck 518 : 146 IC 465 : 35 Cr LJ 10.

——Confession not recorded in accordance with provisions of the section.

A confession by the accused during the remand proceedings before a Magistrate which is not recorded in accordance with the provisions of S. 164, Criminal P. C., must be excluded from consideration. (Shadilal C. J. and Agha Haider, J.) Allah Dad v. Emperor.

137 IC 57 : 33 PLR 25 : Ind Rul (1932) Lah 281 : 33 Cr LJ 377.

——S. 533—Not strictly complied with—Cure.

Even if a statement be not recorded strictly in conformity with S. 164 so long as the Magistrate purports to have recorded it under that section, and even after the statement has been received in evidence, S. 533 can be resorted to

CRIMINAL P. C. (V of 1898), S. 164—10. Effect of non-compliance—Ss. 164 & 533

and evidence taken that an accused person duly made the statement recorded. S. 533 plainly provides that notwithstanding anything contained in S. 91, Evidence Act, such statement shall be admitted, if the error has not injured the accused as to his defence on the merits. 18 Cal 549 ; 21 Bom 495 ; and 32 Cal 550, Rel; 9 Mad 224, Dist.; 17 Cal 862 Diss. from. (Maung Ba and Brown, JJ.) Ba Yin v. Emperor.

AIR 1930 Rang 53 : 121 IC 782 : 7 Rang 759 : 1930 Cr C 245 : 31 Cr LJ 297.

——Requirements as to.

The only warning the magistrate recording confession gave to the accused was whether the accused was willing to make a voluntary confession and that if he made a confession that might be used against him. He did not appear to have informed the accused that he was a magistrate and he did not put to the accused questions in order to find out whether the confession which the accused was about to make was a voluntary one or not.

Held: the defects in the manner of recording the confession made it inadmissible. (Chotzner and Mukerji, JJ.) Emperor v. Garib Hari.

AIR 1926 Cal 742 : 30 CWN 454 : 94 IC 365 : 27 Cr LJ 621.

——Sufficient compliance.

Where the Magistrate who recorded the confession did not sign the certificate which is prescribed by the Code as now amended and signed the certificate which was in use under the old Code and where the accused was not asked if he made the statement voluntarily, but was asked the following question only:— "Are you prepared to make a statement of your own free will?" and where the record of the confession too did not show that the appellant was warned that he was not bound to make a confession and that if he did, it might be used in evidence against him; but where the Magistrate himself was called as a witness and in his evidence, he said in clear terms, that he cautioned the accused, explaining to him that he was not bound to make any statement and that if he did so it might be used in evidence against him.

Held, that the confession, as recorded, was admissible in the case especially since the Magistrate had been examined and had shown that he had observed the provisions of the law. 9 Mad 224; AIR 1922 Lah 237, Dist.; 2 Pat LT 773, Foll. (Adami and Bucknill, JJ.) Ramai Ho v. Emperor.

AIR 1925 Pat 191 : 84 IC 458 : 3 Pat 872 : 26 Cr LJ 314.

——Ss. 164 and 533 — Confession — Record by Magistrate — Narrative form — Irregularity — Cure of defect.

Where a Magistrate who recorded a confession was called and he swore that he had all the police removed from the court room and also had the handcuffs removed from the accused before recording the confession and the Magistrate also asked the accused whether he was tutored by anybody and after being satisfied that the accused was not tutored by anybody recorded his confession. Held that any irregularity in the record of the confession was cured under S. 533 of the Cr. P. Code and that the record of the confession in English and in a narrative form did not render it inadmissible. (Stuart and Ryves, JJ.) Deo Datt v. Emperor.

AIR 1923 All 90 : 20 ALJ 915 : 45 All 166 : LR 3 A 191 (Cr) : 71 IC 54 : 24 Cr LJ 6.

——S. 164 (3) — Failure to comply with Provisions —Effect.

A conviction, based on confessions made in response to an inducement by the police recorded in the presence of the Police, by a Magistrate who fails to comply with the provisions of S. 164 and inconsistent with each other and with other evidence recorded, is bad. A confession by an accused made within sight and hearing of a police Officer and not taken in accordance with S. 164 is not admissible in evidence. (Chapman and Roe, JJ.) Jinhodhan Bhunian v. Emperor

AIR 1917 Pat 475 : 1 Pat LW 388 : (1917) Pat HCC 149 : 39 IC 991 : 18 Cr LJ 623.

——Confession — Irregularity in recording — Its admissibility in evidence.

Where in recording a confession a Magistrate does not comply with the precautions enjoined by the Government not having the force of law, the confession does not become inadmissible in evidence, though the failure of the Magistrate to take those precautions may be a circumstance to be weighed in considering whether the confession was or was not voluntary. (Subrahmania Aiyar and O'Farell, JJ.) Public Prosecutor v. Sarabu Chennayya.

33 M 413 : 8 Ind Cas 809 : 11 Cr LJ 716.

——Ss. 164 and 364 — Conviction based on confession not recorded according to.

An accused cannot be convicted on a confession which is not recorded according to ss. 164 and 364. (Shaw, J. C.) Nga San Ya v. Emperor.

4 Ind Cas 759 : UBR 1909, Vol. 1 Evidence 3 : 11 Cr LJ 41.

——Scope of S. 533— Essential requirements of S. 164 — Oral evidence of Magistrate as to compliance of S. 164 and terms of the confession — Admissibility.

See ibid S. 533 .

1 Cr LJ 1126 (Low Bur.)

——Ss. 164 and 364—Non-compliance of.

A confession recorded in disregard of the provisions of law and the rules of Government regarding the manner in which they are to be recorded must be regarded with gravest suspicion. (Clements Esq.) King-Emperor v. Vela Ratna.

14 KLR 95 : 1 Cr LJ 799.

CRIMINAL P. C. (V of 1898), S. 164
11. Evidential value.
(a) Against co-accused.

11. Evidential value.

——Statement recorded under — Use of.

A statement under S. 164 can be used to cross-examine the person who made it, the result may be to show that the evidence of the witness is false. But that does not establish that what he has stated out of Court under S. 164 is true. AIR 1946 PC 38, Rel. on. (Malik C. J. and Brij Mohan Lall J.) Niamat Singh v. King-Emperor.

ILR (1953) 2 All 250.

——Acceptance of confession — (Evidence Act (1872), S. 24).

A confession if accepted at all, should be accepted as a whole. (Chowdhry J. C.) Sant Ram v. State.

AIR 1953 Him Pra 105 : 1953 Cr LJ 1665.

——Admission of guilt by accused in recovery memorandum — Confession not recorded in accordance with law — Cannot be used against accused.

See Evidence Act (1872) , S. 4.

AIR 1953 All 110 : 1953 Cr LJ 340.

——Ss. 164, 297 and 537— Misdirection— Identification parade — Statements by witnesses to Magistrate at such parade put to jury as substantive evidence — Verdict is vitiated.

Statements made by witnesses to the Magistrate at the time of the test identification parade, with regard to the part played by the identified person are not substantive pieces of evidence even if they are recorded under S. 164, Criminal P. C. If such statements are put before the jury as substantive pieces of evidence it would amount to serious misdirection vitiating the verdict of the jury. (Harries C. J. and Sinha J.) Sheik Pinju v. State.

AIR 1952 Cal 491 : 1952 All WR (Sup) 17 : 1952 Cr LJ 1027.

——Statement — Meaning of — Manner of recording — Use of statement.

The word "statement" in sub-s. (1) of S. 164 appears to have been used in a wider sense and may include statements either of a witness or even of a deceased person and they would have had to be recorded in accordance with the provisions contained in Chap. XXV if they were intended to be used as statements made during the course of investigation under Chap. XIV, or at any time afterwards before the commencement of the inquiry or trial. But if recorded behind the back of the accused, they could not be used as substantive evidence against him. The only object in getting such statements recorded must be either to obtain a hold over witnesses or possibly for the purpose of showing that they had not been made long after the date of occurrence, but soon after an incident as possible in the circumstances of a particular case. These could, however, be used by the accused for the purpose of cross-examining the witnesses and discrediting their evidence at the trial, if they materially differed from what had been given before. (Abdul Rashid C. J., A Rahman and A. S. M. Akram, JJ.) Allah Bakhsh v. The Crown.

CRIMINAL P. C. (V of 1898), S. 164—11. Evidential value

1952 Cr LJ 79 (FC) (Pak.)

——Statement of witness recorded by incompetent Magistrate — Admissibility in evidence — Evidence Act, S. 157.

The statement of witness recorded by an incompetent Magistrate (namely a third Class Magistrate) immediately after the occurrence of an offence can be used to corroborate his subsequent testimony in Court under the provisions of S. 157, Evidence Act. (Muhammad Munir C. J. and Muhammad Sharif, J.) Muhammad Sarfraz Khan v. Crown.

52 Cr LJ 1425 (Lah)

——Statements made by witnesses at test identification — Admissibility — Evidence Act (1872), S. 145.

Statements made by witnesses at test identification parades are statements made under S. 164, Criminal P. C., to a Magistrate after investigation has commenced. Since they are not confessional statements and are not recorded as such, they can only be admissible to contradict a witness and not as substantive evidence. (Harries C. J. and Bachawat, J.) Kanai Lal Dwary v. The State.

AIR 1950 Cal 413 : 51 Cr LJ 1520.

——Statements made by persons at identification parade —Evidentiary value—Evidence Act (1872), Ss. 9, 145, 155 and 157.

Statements made by persons at identification parades are nothing but statements under S. 164. These statements are not substantive evidence, but are merely previous statements of witnesses and can only be used for the purposes of corroborating witnesses under S. 157, Evidence Act, or contradicting them under Ss. 145 and 155, Evidence Act. (Shabir Ahmad J.) Abdul Aziz v. Crown.

AIR 1950 Lah 167 : Pak Cas 1950 Lah 490 : 51 Cr LJ 1350.

——Statements under — Extent of use.

The statement of a witness for prosecution, made under S. 164, cannot be treated as a substantive piece of evidence of the facts stated. (Bannerji J. C.) Bhagi v. Crown.

AIR 1950 Him P 35 : 51 Cr LJ 1004.

——Statement under S. 164 cannot be used as substantive evidence — It may be used to corroborate or contradict the maker. (Bakshi J. C.) Devaraj Daya v. Vishanji Bhanji.

AIR 1950 Kutch 88.

——Ss. 134, 337 — Confession of accused and approver's statement — Credibility and corroboration — Evidence Act (1872), S. 30.

Once a foundation is laid for the belief that an accomplice, or a confessing accused, is speaking

CRIMINAL P. C. (V of 1898), S. 164—11. Evidential value

the truth, because his statement is corroborated on some material points, the Court is at liberty to accept other statements which may not be corroborated. However, where the statement relates to two separate offences committed by the same accused at different times, in pursuance of a conspiracy, the corroboration of the statement regarding one offence cannot be treated as corroboration regarding the other. (Mohd. Jan and Mohd. Shoofi JJ.) Muhammad Naeem v. Crown.

Pak Cas 1950 Lah 657.

——Statement under S. 164 not to be used as substantive evidence.

A statement made under S. 164 can never be used as substantive evidence of the facts stated, but it can be used to support or challenge evidence given in Court by the person who made the statement. The statement by the approver under S. 164 plainly does not amount to the corroboration in material particulars which the Courts require in relation to the evidence of an accomplice. (Viscount Simon, Lord Oaksey, Lord Macdermott, Sir Madhavan Nair and Sir John Beaumont.) Bhuboni Sahu v. The King.

AIR 1949 PC 257 : 28 Pat 592 : 1949 MWN 444 : 53 CWN 609 : 51 Bom LR 955 : 1949 ALJ 283 : 1949-2 MLJ 194 : 62 MLW 664 : 51 PLR 311 : 76 IA 147 : 1949 AWR HC 412 : 1949 All Cri Cas 86: 50 Cr LJ 872 (PC).

——Confession is not binding on accused — Court must find whether it is true.

It is not proper to speak of a confession being "binding" upon an accused person. It is a well-known fact that false confessions are often made by perfectly innocent persons for one reason or another. It is the duty of the Court to find out whether the confession is true or not. If it is not true, the accused cannot be convicted upon it. (Madeley and Walford JJ.) Barhma v. Emperor.

AIR 1947 Oudh 95 : 1946 AWRCC 248 : 1946 OWN 358 : 1946 OACC 248 : 228 IC 21 : 48 Cr LJ 27.

——Statement under S. 164 by witness can be used only to discredit his evidence in Court — Court thinking that witness has been won over by defence — His evidence in Court should be entirely ignored.

The statement of a witness made under S. 164 can be used only to discredit the evidence given by him in the Court, and not for any other purpose. Such a statement cannot be treated as substantive evidence of the facts stated.

Where, in view of a statement made by a witness under S. 164, the Court considers that he has been won over by the defence, his evidence in Court must be entirely ignored. (Lords Thankerton, Goddard and Sir John Beaumont.) Mamand v. Emperor.

AIR 1946 PC 45 : 48 Bom LR 295 : 59 MLW 138 : 1946 MWN 103 : 1946 OAPC 5 : 12 BR 360 : 223 IC 34 : 50 CWN 353 : 1946 AWR (PC) 5 :

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1946 1 MLJ 211 : 1946 ALJ 103 : 48 PLR 311 : 1946 Pat WN 182 : 1946 OWN (PC) 218 : 47 Cr LJ 344 (PC).

——Statement made under S. 164 cannot be used as substantive evidence — It can be used to cross-examine person making it.

A statement made under S. 164, Criminal P. C., cannot be used as a substantive piece of evidence. The statement can be used to cross-examine the person who made it, and the result may be to show that the evidence of the witness is false. But that does not establish that what he stated out of Court under S. 134 is true. (Lords Thankerton, Goddard and Sir John Beaumont.) Brij Bhushan v. Emperor.

AIR 1946 PC 38 : 1946 OWN 71 : 73 IA 1 : 21 Luck 176 : 48 Pun LR 337 : 59 MLW 516 : (1946) 1 MLJ 147 : 1946 Mad WN 97 : 1946 OA PC 1 : 27 Pat LT 79 : ILR (1946) Kar (PC) 45 : 50 CWN 348 : 1946 Pat WN 58 : 12 BR 326 : 1946 AWRPC 1 : 1946 ALJ 73 : 48 Bom LR 288 : 1946 Pesh LJ 38 : 47 Cr LJ 336 (PC).

——Ss. 164, 162— Whether substantive evidence.

Statements under S. 164, Criminal P. C., are not substantive evidence at all; they can be used for the purpose of corroboration and contradiction and when used for purposes of contradiction, they merely destroy the credit of the witness, which is not a way of proving that what the witness says is true. (Davis, C. J. and O'Sullivan, J.) Nur Muhammad v. Emperor.

AIR 1944 Sind 38 : 16 RS 205 : ILR (1944) Kar 86 : 211 IC 403 : 45 Cr LJ 393.

——Statements made in committing Magistrate's Court when admitted under S. 288, Criminal P. C., are as much evidence as statements made in Sessions Court itself and they can be corroborated by previous statement under S. 164, Criminal P. C. (Davis C. J. and Weston, J.) Dodo Bahadur v. Emperor.

AIR 1942 Sind 139 : ILR (1942) Kar 299 : 15 RS 78 : 203 IC 482 : 44 Cr LJ 73.

——A statement made under S. 164, Criminal P. C., is not inadmissible in evidence and may be used to corroborate or contradict a statement made in the Court in the manner provided by Ss. 145 and 157, Evidence Act. (Bartley and Mohamad Akram, JJ.) Manik Gazi v. Emperor.

AIR 1942 Cal 36 : 74 CLJ 208 : 14 RC 400 : 197 IC 815 : 43 Cr LJ 277.

——Murder case— Statement of prosecution witness that accused killed deceased — Witness in Sessions Court not even stating that accused was present at place of murder — Statement under S. 164 put in under S. 157, Evidence Act (I of 1872), to corroborate witness.

In a murder case, the daughter of the accused who was a prosecution witness, did not even state in the Sessions Court that her father was in the hut where the murder took place on the night

CRIMINAL P. C. (V of 1898), S. 164—11. Evidential value

of the occurrence, whereas under S. 164, she explicitly made a statement that her father had killed her mother. The statements under S. 164 were put in at the instance of the Public Prosecutor after objection by the defence pleader and it was noted in the order-sheet that they were put in under S. 157, Evidence Act, to corroborate the girl :

Held, that it could not be said that the statement of the girl under S. 164, corroborated her statement in the Sessions Court. In fact, it clearly contradicted it and the prosecution could only put in the statement under S. 164, Criminal P. C., with the permission of the Court in order to impeach the credit of their own witness under S. 165, sub-s. (3), Evidence Act. The statement under S. 164, Criminal P. C. was itself not evidence at all against the accused and its only purpose could have been to negative the evidence of the girl as given in the Sessions Court. (Henderson and Roxburgh, JJ.) Emperor v. Sekendar Ali Shah.

AIR 1941 Cal 406 : 14 RC 137 : 195 IC 774 : 42 Cr LJ 781.

——Part of statement, whether can be used for corroboration.

Part of a statement made under S. 164, Criminal P. C., cannot be used to corroborate evidence which includes that statement itself, and which is obviously in much need of corroboration. (Grille and Gruer, JJ.) Karu Mansukh v. Emperor.

AIR 1937 Nag 254 : 20 NLJ 103 : 9 RN 285 : ILR (1937) Nag 524 : 168 IC 976 : 38 Cr LJ 648.

——Ss. 164, 364— Magistrates telling accused that they are Magistrates — Fact not recorded in memos.

It is not at all fair to avoid the precautions laid down in Ss. 164 and 364, Criminal P. C., and endeavour to prove oral confession made to Magistrates some of whom had no power to record a confession at all —It may be legal — a matter which is somewhat doubtful—but no weight can be attached to confession so obtained. Where the Magistrates all state that they told the accused that they were Magistrates but curiously enough all forget to record this fact in the memos prepared by them, such confessions are of little evidentiary value. (Dalip Singh, J.) Lal Singh v. Emperor.

AIR 1936 Lah 707 : 9 RL 111 : 38 PLR 881 : 164 IC 373 : 37 Cr LJ 940.

——Statements under S. 164, Criminal P. C., are not substantive evidence. Such statements come under S. 157, Evidence Act, to be proved only to corroborate the testimony of witnesses who made them. (Mockett and Lakshmana Rao, JJ.) Emperor v. Ponnuchami Theven.

1936 MWN 1389.

——Ss. 164, 288, 293— Statement made before

CRIMINAL P. C. (V of 1898), S. 164—11. Evidential value

Magistrate resiled from in Sessions Court—Statement recorded under S. 164 —Admissibility of—Corroboration.

A statement by a witness recorded by the Magistrate under S. 134, Criminal P. C., is admissible in evidence to corroborate the statement made by that witness before the committing Magistrate from which statement the witness resiled in the Sessions Court, inasmuch as the credibility of the statement in the Committing Magistrate's Court which must be considered as substantive evidence before the Court of Session must be tested in exactly the same way as one made in the Sessions Court. (Guha and Bartley, JJ.) Manar Ali v. Emperor.

AIR 1934 Cal 124 : 37 CWN 1066 : 58 CLJ 66 : 60 Cal 1339 : 6 RC 411 : 147 IC 1203 : 35 Cr LJ 567.

——In the absence of other reliable evidence in corroboration, the evidence of an approver coupled with the retracted confession of a co-accused is not sufficient for conviction. The two together cannot obviate the necessity of corroboration from independent sources. The corroboration need not be full proof of guilt but should establish a sufficient degree of complicity. (Pullan and Niamatullah, JJ.) Nazir v. Emperor.

AIR 1933 All 31 : 1932 ALJ 1125 : Ind Rul (1933) All 170 : 55 All 91 : 143 IC 67 : 34 Cr LJ 489.

——A statement made under S. 164 behind the back of the accused cannot be properly used as evidence against him. The only object in recording such statement is to obtain a hold over the witness. 17 OC 363, Foll. (Raza and Pullan, JJ.) Manni v. Emperor.

AIR 1930 Oudh 406 : 7 OWN 736 : 1930 Cr C 946 : 127 IC 878 : 32 Cr LJ 48.

——Previous statements used for discrediting the evidence of witness cannot be used as substantive evidence. 34 Cal. 129 (PC) Ref. 26 Mad. 191 and 17 OC 333, Foll. (Walsh and Kendall, JJ.) Bishen Datt v. Emperor.

AIR 1927 All 705 : 105 IC 677 : 8 LRA Cr 130 : 8 AI Cr R 287 : 25 ALJ 994 : 28 Cr LJ 965.

——Statements of witnesses recorded under S. 164, Cr. P. Code, cannot be used for the purpose of contradicting the statements of other witnesses made at the trial. (Harrison and Jailal, JJ.) Hari Ram v. Emperor.

AIR 1926 Lah 122 : 89 IC 897 : 26 Cr LJ 1425.

——Where an accused person makes a statement before a Magistrate under S. 164 of the Cr. P. Code and the statement is not a confession but is of an exculpatory character, it is not admissible in evidence in favour of the accused but is admissible against him as evidential of a fact relative to the prosecution story. (Bucknill and Ross, JJ.) Golam Mohammad v. Emperor.

AIR 1925 Pat 536 : 86 IC 814 : 4 Pat 327 : 6 PLT 598 : 3 Pat LR Cr 175 : 26 Cr LJ 878.

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——Confession not voluntary is of no value as evidence.

One witness had stated that the appellant was beaten before he told the Police what had happened, and the Magistrate stated that the appellant was returned to the Police Custody after making his confession. Further there were details in the confession which conflicted with the evidence for the prosecution. The confession had been retracted on the first possible occasion. Held it was not genuine and it is of no value as evidence against the appellant. (Shadi Lal, C. J. and Campbell, J.) Harphul v. Emperor.

AIR 1923 Lah 429 : 75 IC 762 : 25 Cr LJ 58.

——Confession which is uncontradicted and corroborated must be held to be true.

Per Kanhaiya Lal, J. C. and Lyle, A. J. C :— Where there is a reasonable doubt whether the accused gave the information which led to a discovery, it would be unsafe to rely on his confession. If the dead body in a murder case was discovered in consequence of the confession, the corroboration would be material, but if the evidence produced about the time when the dead body was discovered is discrepant it is difficult to say whether the discovery was made before the confession or afterwards.

Per Lyle, A. J. C.—Although criminals do at times confess for no apparent reason, they generally do so in some vague hope of escaping from the penalty of their crime when they know or believe that there is evidence against them.

Per Kanhaiyalal, J. C.—The failure of the prosecution in many cases is due to the inveterate desire of the investigating officer not to work up to the confession but to get hold of a confession first and then work from it downwards.

Per Ashworth, A. J. C.—Where an accused person has pointed out the whereabouts of the body of a man who has undoubtedly been murdered and has made a confession which not only is uncontradicted by any of the facts proved in the case but indeed has received corroboration in respect of many points, then the confession should be held to be true as implicating the person making it unless he can make out a strong case to the contrary. It is not necessary that the confession of an accused should receive direct corroboration as to the fact that the accused was concerned in the offence. It is sufficient that there was such corroboration of the confession as to indicate that the accused had such knowledge of the circumstances of the offence as would suggest his taking part in it. (Kanhaiya Lal, J. C., Lyle and Ashworth, A. J. Cs.) Hinga v. Emperor.

AIR 1922 Oudh 202 : 9 OLJ 190 : 68 IC 17 : 4 UPLR (JC) 150 : 23 Cr LJ 481.

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11. Evidential value.

(a) Against co-accused.

——Statement by accused — Value of, against co-accused.

The statement made by an accused is of no value against his co-accused, nor can it be used to fill in the gap in the case of the prosecution. (R. Kaushalendra Rao and Deo JJ.) State Govt., Madhya Pradesh v. Hifzul Rahman.

AIR 1952 Nag 12 : 1952 Nag LJ 13 : ILR (1951) Nag 764 : 1952 Cr LJ 98.

——Confession of one accused recorded under S. 164 can be used against his co-accused.

See — Penal Code (45 of 1860) S. 302.

AIR 1947 Mad 264 : 48 Cr LJ 89.

12. Extra-judicial confession.

——Record of accused's statement attested by witnesses not filed — Witnesses merely stating what accused said — There is no check on accuracy.

Where there is no record of the statement by the accused taken at the time and attested by the witnesses but the witnesses merely give evidence each of them, of what the accused had said, although there are no serious discrepancies in their evidence, still there is no check on its exact accuracy. (King and Happell, JJ.) In re Peria Chelliah Nadar.

AIR 1942 Mad 450 : 1942 MWN 291 : 15 RM 485: (1942) 1 MLJ 503: 202 IC 290: 43 Cr LJ 810.

——Extra-judicial confession to doctor.

No doubt extra-judicial confession to a doctor cannot carry the same weight as a confession duly recorded under S. 164 but it is admissible under S. 21, Evidence Act. (Varma and Meredith, JJ.) Emperor v. Kommoju Brahman.

AIR 1940 Pat 163 : 19 Pat 301 : 6 BR 577 : 12 RP 674 : 188 IC 57 : 41 Cr LJ 533.

——Extra-judicial statements, when can be proved.

Though an extra-judicial confession to any ordinary person (other than a Police Officer) can be proved, such a confession cannot be proved at all if made to a Magistrate, unless the provisions of S. 164, Criminal P. C., have been complied with; and it will not help for a Magistrate to say that he did not purport to act under the provisions of S. 164. (Varma and Meredith, JJ.) Emperor v. Kommoju Brahman.

AIR 1940 Pat 163 : 19 Pat 301 : 6 BR 577 : 12 RP 674 : 188 IC 57 : 41 Cr LJ 533.

——Precautions to be taken.

Where an attempt is made to rely upon an extra-judicial confession, every precaution should be taken to ascertain as exactly as possible the very words which were used by the prisoner who is supposed to have confessed. (Ferrers, J. C. and Mehta, A. J. C.) Sultan v. Emperor.

AIR 1934 Sind 119 : 7 RS 74 : 28 SLR 285 : 151 IC 984 : 36 Cr LJ 62 (2).

13. False statement.

——Statement or confession — False statement by witness — Witness illiterate Madiga resiling

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from statement on the ground that he had been forced by police to make the statement — Prosecution of the witness.

See ibid, S. 476.

AIR 1949 Mad 502 : 50 Cr LJ 775.

——Statements recorded by a Magistrate in the course of a Police investigation under S. 164, Cr. P. C., are evidence in a stage of a judicial proceeding within the meaning of Explanation (2) to S. 193, Penal Code. (Bennet and Kisch, JJ.) Maromma v. Emperor.

AIR 1933 Mad 125 : Ind Rul (1933) Mad 43 : 1933 MWN 100 : 140 IC 756 : 34 Cr LJ 926.

——The confessional statement under S. 164 cannot be treated as evidence in a judicial proceeding for purpose of conviction under S. 193, I.P.C. (Pekenham Walsh, J.) Public Prosecutor v. Boya Bisatiga.

1933 MWN 251.

——A statement under S. 164, Criminal P. C., is not evidence in a stage of judicial proceedings within meaning of Expl. 2, S. 193, Penal Code and a person cannot be convicted under Part I of S. 193, Penal Code in respect of such a statement. (Dalip Singh J.) Sajawal v. Emperor.

AIR 1932 Lah 254 (1) : 33 PLR 179 : Ind Rul (1932) Lah 297 : 137 IC 131 : 33 Cr LJ 413 (2).

——A statement recorded by any Magistrate in the course of a police investigation under S. 164 is not evidence in a stage of a judicial proceeding within the meaning of S. 193, I. P. Code, Expl. 2. 18 Bom 377 F.B., Overruled; 11 Bom 659 and 22 All 119, Appr. (Macleod, C. J., Shah, Fawcett and Setalvad, JJ.) Purshottam Ishvar Amin v. Emperor.

AIR 1921 Bom 3 : 60 IC 593 : 45 Bom 834 : 23 Bom LR 1 : 22 Cr LJ 241 (FB).

——Statement recorded on oath found to be false —Charge of perjury.

See ibid S. 476.

8 Bom LR 589 : 4 Cr LJ 183.

14. In the course of investigation etc.

——S. 164 (1)—"In the course of an investigation, enquiry or trial.

A Sub-Inspector acts illegally in getting the statements of witnesses recorded under S. 164 after the investigation has ended and the inquiry before the committing Magistrate has commenced. (Chowdhry J. C.) Chatru v. State.

AIR 1953 Bilaspur 3 : 1953 Cr LJ 708.

——Scope of section.

Section 164, Cr. P. C. comes into play when during an investigation an accused is formally brought before a Magistrate for the purpose of recording his confession. (Mack and Chandra Reddi, JJ.) Ramaswami Reddiar, In re.

AIR 1953 Mad 138 : 1952 Mad WN 897 : 1952 Mad WN Cr 253 : 1952-2 Mad LJ 814 : ILR (1953) Mad 924 : 1953 Cr LJ 315.

CRIMINAL P. C. (V of 1898), S. 164 — 14. In the course of investigation, etc.

——Statement of witness by Magistrate — Statement not made during Police investigation — Admissibility in evidence.

The words "in the course of an investigation" in S. 134 as would appear from the succeeding words "or at any time afterwards before the commencement of the inquiry" mean "while the investigation is in progress." A statement under that section may be recorded not only at the instance of the police but also at the instance of the accused or the aggrieved person or at the request of the witness himself. The authority to record statements in the course of police investigation does not exclusively vest in the Magistrates competent to take cognizance of the offence. The section itself expressly states that it is not necessary that the Magistrate recording such statement should have jurisdiction in the case. (Muhammad Munir C. J. and Muhammad Sharif J.) Muhammad Sarfraz Khan v. Crown.

52 Cr LJ 1425 (Lah).

——Evidence of Magistrate — Admission made to Magistrate not in the course of investigation but when he went to trap the accused — Oral evidence of Magistrate is admissible.

See ibid, S. 533.

AIR 1949 Oudh 84 : 51 Cr LJ 219.

——Confession of murder made by accused to Magistrate not investigating case.

Statement made by an accused that he had killed the deceased and describing the circumstances of the crime to the Magistrate when he was not investigating the case or any of the facts connected with the case does not fall under S. 164, Cr. P. C., and is admissible in evidence though not recorded after observing the formalities prescribed by S. 164. (Burn and Stodart, JJ.) In re Nainamuthu Kannappan.

AIR 1940 Mad 138 : 50 LW 784 : 1939 MWN 1132 : 12 RM 661 : ILR (1940) Mad 428 : (1940) 2 MLJ 89 : 186 IC 479 : 41 Cr LJ 322.

——No written complaint of specific act — No Police investigation — Deputy Magistrate ordering confession to be recorded — Legality.

A Magistrate can only record a confession under S. 164, Criminal P. C. or a District Magistrate can order such a confession to be recorded by his Subordinate Magistrates when, in the course of a Police enquiry under Chap. XIV, it is discovered that a certain person who has been definitely charged with a certain particular offence is willing to make an incriminating statement in respect of that offence. Where a person produces the accused against whom no criminal charge had been brought by any one before the Deputy Commissioner and makes a verbal statement before that officer to the effect that the accused was in the habit of committing forgeries and was willing to make a statement to that effect and no written complaint is made by the person

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against the accused that he had committed any particular and specific act of forgery, nor was any Police investigation pending against the accused in respect of any alleged particular act of forgery, the Deputy Commissioner has no legal authority to order the confession of the accused to be recorded and to discover from that confession grounds for subsequently bringing a specific charge of forgery in respect of any particular document admitted by the accused to have been forged. (Nanavutty, J.) Sheo Prasad v. Emperor.

AIR 1935 Oudh 416 : 7 RO 667 : 1935 OWN 722 : 156 IC 231 : 36 Cr LJ 927.

——Challan against two accused — Confession by absconder after commencement of evidence — Recording of confession under S. 164 — Adjournment for fresh investigation.

A challan was placed before a Magistrate against two persons one of whom was shown as absconding and formal evidence was recorded and the case was adjourned. The absconder was subsequently arrested and his confession was recorded by the Magistrate under S. 164, Criminal P. C., and the case was adjourned to enable the Police to carry on the investigation further into the truth of the absconder's confession. The proceedings were thereafter conducted de novo by another Magistrate and the accused were committed for trial:

Held, (i) that inasmuch as the absconder had not been produced before the Magistrate, the enquiry so far as he was concerned could not be said to have begun when his confession was recorded, and the confession was, therefore, properly recorded under S. 164:

(ii) even assuming that an enquiry had commenced there was nothing in law against holding a fresh investigation, and the procedure adopted was not in any case illegal. (Coldstream and Jailal, JJ.) Mohinder Singh v. Emperor.

AIR 1932 Lah 103 : Ind Rul (1932) Lah 81 : 33 PLR 891 : 135 IC 209 : 33 Cr LJ 97.

——It is a question whether a confession under S. 164 can be recorded by a Magistrate after a case has been sent to him for inquiry. (Jai Lal and Bhide, JJ.) Pahlawan v. Emperor.

AIR 1930 Lah 454 : 1930 Cr C 558 : 123 IC 540 : 31 Cr LJ 533.

—— Incomplete challan put by police — Confession under retraction.

A was charged of murder. Before police investigation had been concluded, an incomplete challan was placed before the committing Magistrate who, after recording the evidence of some witnesses, examined the prisoner under S. 342, wherein A admitted his participation in assault. But when he was again examined he denied having committed the murder and attributed his previous statement to a promise of pardon by the

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police and also to the ill-treatment by the investigation officer. It was found that the incomplete challan was produced with the object of avoiding mandatory provisions of S. 164.

Held that an attempt by the police to get over the mandatory provisions of S. 164 must be deprecated and such confession must be excluded from consideration. (Shadi Lal, C. J. and Coldstream, J.) Sullah v. Emperor.

AIR 1928 Lah 724 : 110 IC 329 : 29 PLR 388 : 10 LLJ 311 : 10 AICr R 508 : 29 Cr LJ 697.

——Where, in a case where sanction of the Local Government was necessary under S. 197 a confidential enquiry was made by an officer of the Criminal Investigation Department before such sanction was granted or before any enquiry was directed by the Magistrate and statements of witnesses were recorded at such enquiry by such officer and also before a Magistrate.

Held, the statements recorded by the Criminal Investigation Department Officer were not statements under S. 132 nor were the statements recorded by the Magistrate statements under S. 164. 19 Bom 51 Rel. on. (Crump and Madgavkar, JJ.) Emperor v. Jehangir.

AIR 1927 Bom 501 : 106 IC 100 : 29 Bom IR 996 : 8 AI Cr R 324 : 28 Cr LJ 1012.

——Where an investigation was being held by the Burdwan Police but the accused was arrested at Calcutta by Calcutta police.

Held, that the arrest of the accused and his production before the Magistrate in Calcutta must be considered as some thing done in the course of that investigation and not apart and quite detached from the investigation that was being held at Burdwan. (Chotzner and Mukerji, JJ.) Emperor v. Garib Hari.

AIR 1926 Cal 742 : 30 CWN 454 : 94 IC 385 : 27 Cr LJ 621.

——Native States.

Magistrate of Native State recording the explanation of an accused for the purpose of the Extradition Rules of that State is not recording the statement of an accused person in the course of an investigation under Chapter XIV of the Cr. P. C. (Crump, J.) Emperor v. Anandrao Gangaram.

AIR 1925 Bom 529 : 89 IC 1046 : 27 Bom LR 1034 : 49 Bom 642 : 26 Cr LJ 1478.

——Confession can be recorded before trial.

There is nothing in S. 164 or any other provision of the Cr. P. Code which forbids a Magistrate from recording a statement if the accused chooses to make one before he is placed on his trial. Such a statement if proved to be voluntary is not only admissible but is of the greatest value as a fact relevant to the probability or improbability of his guilt. (Mullick and Thornhill, JJ.) Madan Guru v. Emperor.

73 IC 963 : 4 Pat LT 381 : 24 Cr LJ 723.

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——A confession, to come within the scope of s. 164, Cr. P. C., must be made either (1) in the course of an investigation under Ch. XIV, or (2) at any time afterwards and before the commencement of the enquiry or trial. The condition requiring the confession to be prior to the commencement of the enquiry or trial is only imposed when the investigation has ceased, and not when it is made in the course of the investigation. (Lawrence Jenkins C. J. and Carnduff, J.) Barindra Kumar Ghose v. Emperor.

37 C 467 : 14 CWN 1114 : 7 Ind Cas 359 : 11 Cr LJ 453.

——Magistrate competent to record confession — Confession recorded after enquiry had commenced —Admissibility.

There is nothing in Criminal P. C. to incapacitate the Magistrate who intends eventually to try the person confessing from recording the confession under S. 164. Even if S. 164 cannot apply to the case, the provisions of Ss. 342 and 364 are not exhaustive and do not limit the generality of Section 21 of the Evidence Act as to the relevance of admission and therefore the contention that if the confession is recorded after the commencement of the trial it would be inadmissible in evidence is unsustainable. Such an argument seeks to derive from the provisions of the Criminal P. C. a limitation on the law of evidence as to confessions for which there is no warrant. (Lawrence-Jenkins C. J. and Carnduff, J.) Barindra Kumar Ghose v. Emperor.

14 CWN 1114 : 7 Ind Cas 359 : 37 Cal 467 : 11 Cr LJ 453.

15. Memorandum.

(a)) Absence of — Effect.
(b) Essentials.
(c) If conclusive.
(d) Presumption.

15. Memorandum —

(a) Absence of — Effect.

——Defect in recording — Note under S. 164 (3) not appended — Confession cannot be taken into account — Even if it is admissible it cannot be proper basis for conviction.

Where a note in a prescribed form is not appended as required by S. 164 (3) to the confession recorded by a Magistrate, it cannot be taken into account and even if it is held to be admissible in evidence, no evidentiary value can be attached to it and it cannot be the proper basis for conviction: 7 CWN 220, Ref. (Sinha and Mathur JJ.) Jagmal v. Rex.

AIR 1948 All 211 : ILR (1948) All 259 : 1948 AWRHC 68 : 1948 OAHC 68 : 1948 ALJ 106 : 49 Cr LJ 243.

——Ss. 164 (3) and 533 — Non-recording of or failure to sign memorandum at foot of confession —Effect of.

Mere non-recording of the memorandum at the foot of the confession as required by S. 164 (3) or failure to sign it will not vitiate the confession if the provisions of the section have in fact been complied with and the recorded statement has been read over to the confessor and admitted by him to be correct. The defect may be cured under S. 533. (Das and Ray JJ.) Punia Mallah v. Emperor.

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AIR 1946 Pat 169 : 24 Pat 646 : 1945 PWN 397 : 228 IC 51 : 13 BR 120 : 48 Cr LJ 30.

——Magistrate's failure to make memorandum of confession in his own hand.

No doubt, under S. 164, read with S. 364, Criminal P. C., the Magistrate has to make a memorandum in his own handwriting, but that defect is cured by S. 533(1) when the Magistrate is examined in the case. Where the Magistrate has been examined and he has given a satisfactory explanation of the same, the omission to make the memorandum in the Magistrate's own hand does not render the confession inadmissible. (Divatia and Lokur JJ.) Chavadappa Pujari v. Emperor.

AIR 1945 Bom 292 : 47 Bom LR 63 : 1946 Bom Rul 23 : 221 IC 86 : 47 Cr LJ 51.

——Memorandum required by S. 164, Criminal P. C., must be appended to the record of confession. Where this is not done, the confession is inadmissible. (Thomas, C. J. and Bennett, J.) Ram Singh v. King-Emperor.

AIR 1943 Oudh 269 : 1943 OWN 88 : 1943 AWR (C.C.) 21 : 15 RO 472 : 205 IC 514 : 44 Cr LJ 389.

——Ss. 164 (3), 533 — Confession fulfilling all requirements of certificate required by sub-s. (3) except appending of certificate — Defect is curable under S. 533.

Where a confession recorded under S. 164, Criminal P. C., fulfils all the ingredients of the certificate indicated in sub-s. (3) of S. 164, except one viz., that the Magistrate believed the confession to have been voluntarily made but that factor is supplied by the Magistrate in his oral evidence, the mere failure of the Magistrate to append the certificate in terms of sub-s. (3) is merely a formal defect which does not affect the merits of the statement made by the accused and is curable under S. 533. (Niyogi and Gruer JJ.) Maroti Jago v. Emperor.

AIR 1940 Nag 230 : 1940 NLJ 210 : 12 RN 333 : 188 IC 146 : 41 Cr LJ 553.

——Confession recorded but no certificate appended — Magistrate examined as witness — Confession is admissible.

A confession of an accused was recorded by a Magistrate after giving him ten minutes' time to reflect. But no certificate as required by S. 134, Criminal P. C., was appended. The Magistrate himself was examined as a witness and had deposed that he had satisfied himself that the confession was made voluntarily and that he had

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warned the accused that he need not make the confession, and that if he made one, it could be used against him :

Held, that there was no reason to disbelieve the sworn testimony of the Magistrate and that this confession was admissible in evidence. (Young C. J. and Tekchand, J.) Kartar Singh v. Emperor.

AIR 1938 Lah 556 : 11 RL 224 : 40 PLR 854 : 176 IC 666 : 39 Cr LJ 769.

——Ss. 164 and 85—Criminal rule of practice.

A confession recorded without either complying with S. 85 or appending a certificate under S. 164, Criminal P. C., but after explaining that the accused was not bound to confess and it will be used against him, is admissible. (Sir Owen Beasley C. J. and Reilly, J.) Annamalai v. Emperor.

1932 MWN 714.

——Omission to record certificate that accused was warned — Examination of Magistrate, whether cures the defect.

The omission of a Magistrate recording a confession to append to the record a certificate to the effect that he had explained to the accused that his confession might be used as evidence against him, is an irregularity which can be cured by examining the Magistrate himself and proving that he had made the necessary explanation before recording the confession. (Addison and Coldstream, JJ.) Aimna v. Emperor.

AIR 1931 Lah 196 : Ind Rul (1931) Lah 321 : 130 IC 641 : 32 Cr LJ 579.

——Absence—Effect.

When the Magistrate has complied with the provisions of S. 164, but has failed to append to the record the necessary certificate required by S. 164, S. 533 comes into operation and on proof by the Magistrate that he had complied with the provisions of S. 164, the record becomes admissible. S. 533 is by its terms confined to confessions or statements recorded under S. 164 or S. 364. After the Magistrate has been examined and the Court is satisfied that the statement was duly made it is the record of such a statement that has been made admissible by S. 533 and not the evidence of the Magistrate about the terms of the statement. Case law discussed. (Jai Lal and Currie, JJ.) Jog Rai v. Emperor.

AIR 1930 Lah 534 : 129 IC 289 : 1930 Cr C 682 : 32 Cr LJ 290.

——Absence or defect—Cure.

If the memorandum does not appear or is defective, the document is inadmissible unless the defects can be cured by the examination of the Magistrate who recorded it under S. 533.

Where the memorandum at the foot of confession recorded does not conform with the form as laid down the defect is curable if it is of form

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and not of substance. If as a matter of fact, the statement was duly recorded that is to say, after the required explanation had been given, but the Magistrate had failed to embody that fact in the certificate such a defect would be curable. If the explanation had not been made the statement could not be held to have been 'duly made' and S. 533 cannot be appealed to. (Broadway and Addison, JJ.) Partap Singh v. Emperor.

AIR 1925 Lah 605 : 93 IC 978 : 6 Lah 415 : 7 LLJ 482 : 27 Cr LJ 514.

——Absence of certificate vitiates confession.

The absence of the certificate might be cured by the evidence of the Magistrate but the failure to make any enquiry as to the state of mind of the confessant at the time the confession is recorded is fatal. (Le Rossignal and Zafar Ali, JJ.) Jehana v. Emperor.

AIR 1923 Lah 345 : 73 IC 506 : 24 Cr LJ 618.

——S. 164 (3)— Absence of memorandum of inquiry does not vitiate confession.

A Magistrate would be well advised to make a memorandum of enquiry before recording the confession of an accused though the law does not expressly require it. But a confession duly recorded does not become inadmissible owing to the absence of a memorandum. (Chevis and Scott-Smith, JJ.) Umar Din v. Emperor.

AIR 1921 Lah 32 : 2 Lah 129 : 3 Lah LJ 287 : 1922 PLR 87 : 67 IC 340 : 23 Cr LJ 388.

——S. 164 (3)— Certificate — Omission of — Admissibility of confession.

The effect of the omission of a certificate by the Magistrate as to the voluntary nature of the confession is to render the record of confession inadmissible in evidence. 8 Bom LR 950 followed. (Stuart and Kanhaiya Lal, A. J. Cs.) Ram Sudh v. Emperor.

AIR 1918 Oudh 295 : 5 OLJ 70 : 45 IC 267 : 19 Cr LJ 507.

——Ss. 164, 533—Certificate of voluntariness omitted—Defect cured by evidence of Magistrate.

Where a Magistrate inadvertently omits to certify the voluntariness of a confession recorded by him under S. 164, Cr. P. Code, the defect may be cured by the evidence of the Magistrate. (George Knox and Karamat Husain, JJ.) Ramsanehi v. Emperor.

9 Ind Cas 148 : 12 Cr LJ 15 (All).

15. Memorandum—

(b) Essentials.

——S. 164 (3)—Certificate as to voluntariness of confession — Record of reasons before recording confession is not necessary— Certificate appended after recording is sufficient — (High Court Rules and Orders — Madras Criminal Rules of Practice, R. 85).

Section 164, Cr. P. C., does not require a Magistrate to give reasons before beginning to record

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a confession for his satisfaction that the accused was going to make a voluntary statement. R. 85 of the Criminal Rules of Practice requires some revision in view of technical and literal non-compliance with each of the suggested questions being sought to be made ground of attack to undermine the voluntary nature of the confession. While the questions required to be put by a Magistrate before the accused made a statement are no doubt absolutely necessary to ensure a confession being a voluntary one, it is only after the accused has made a statement that a Magistrate, after hearing him and observing his demeanour can be in the best position to append the highly responsible certificate required of him to validate a confession that he believes it to have been voluntarily made. (Govinda Menon and Mack, JJ.) Kakana Ramana Reddy In re.

AIR 1953 Mad 74 : 1952 MWN Cr 189 : 1952 Mad WN 741 : 1952-2 MLJ 501 : ILR (1953) Mad 417 : 1953 Cr LJ 264.

——Ss. 134, 364 and 533 — J. and K. General Criminal Rules, Ch. XII R. 10 — Non-compliance with provisions of Ss. 164 and 364 and of instructions under R. 10 — Irregularity is of substance and not curable under S. 533.

Where the confessional statements are not recorded in the manner required by Ss. 164 and 364, Criminal P. C., there is no "Memorandum of Enquiry" entered before the statements were recorded as required by R. 10 of Ch. XII, General Criminal Rules, the statements are recorded in a narrative form and the questions put to the accused and the answers given by them have not been entered and the memorandum containing the requisite certificate at the end of the statement under S. 164 is not recorded, the defects are defects of substance and not being formal defects are not curable under S. 533, Criminal P. C. The defects render the statements inadmissible in evidence and even extrinsic evidence of the Magistrate that he had complied with such requirement does not remedy the defect. (Jai Lal Kilam and Shahmiri, JJ.) Atta Mohammad v. State.

AIR 1952 J & K 36 : 9 J & KLR 137 : 1952 Cr LJ 1579.

——S. 164 (3)—Magistrate's certificate not in form prescribed in section—Magistrate however providing substance thereof— Confession held admissible as evidence. (R. S. Trivedi, J. C.) Aher Jiva Hira v. Kutch Government.

AIR 1950 Kutch 30 : 51 Cr LJ 749.

——S. 164 (3)— Forgetfulness to read over confession to accused—Defect bearing on merits of defence — Defect if cured.

Where for the omission to read over a recorded confession to the maker thereof no other explanation is advanced than that of forgetfulness of the Magistrate and the defect directly bears on the merits of the deponent's defence, the defect

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cannot be regarded as fully cured by the Magistrate's statement. (Din Mohammad and Cornelius, JJ.) Emperor v. R. B. Lovett.

231 IC 408 : 48 Cr LJ 794 (Lah).

——The addition of a note to the certificate attached to the confession stating what the Magistrate did after the accused was produced before him cannot invalidate the confession when the note is not a part of the certificate. (Divatia and Lokur, JJ.) Chavadappa Pujari v. Emperor.

AIR 1945 Bom 292 : 47 Bom LR 63 : 1946 Bom Rul 23 : 221 IC 86 : 47 Cr LJ 51.

——S. 164 (3)— Certificate that confession was voluntary, should be given after recording confession.

Section 164 (3), Criminal P. C., requires the Magistrate first to satisfy himself from questions put to the accused that the accused is making the confession voluntarily, and finally to certify, after he has recorded the confession that the confession was, in his opinion, made voluntarily. After the confession has been recorded, the Magistrate is in a better position to say whether the confession was voluntary or not, for the manner in which it was made affords some indication whether it was made voluntarily. (Niyogi and Pollock, JJ.) Baliram Singh v. Emperor.

AIR 1939 Nag 295 : 12 RN 106 : 1939 NLJ 442 : ILR (1941) Nag 506 : 184 IC 274 : 40 Cr LJ 937.

——In the certificate which the Magistrate had appended to the confession, he said :—"I explained to accused that he is not bound to make the confession and if he does so, any confession he may make, may be used as evidence against him. This was explained to him yesterday, when he was brought before me and even before recording the confession to-day. He was given sufficient time for reflection and I believe from the manner in which he gave the statement that the confession was voluntarily made. It was taken in my presence and hearing and was read over to the person making it and admitted by him to be correct and it contains a full and true account of statement made by him":

Held, Magistrate who recorded the confession had taken every possible precaution. (Murphy and Broomfield, JJ.) Krishna Babaji Chavan v. Emperor.

AIR 1933 Bom 230 : 35 Bom LR 371 : 6 RB 39 : 145 IC 133 : 34 Cr LJ 896.

——Confession, if should be recorded in Magistrate's own handwriting — Defect, how cured — Admissibility.

Section 164, Criminal P. C., does not require the certificate therein set to be written by the Magistrate in his own hand. Even if it be supposed that the words 'he shall make a memorandum' in S. 164 are equivalent to 'he shall make a me-

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morandum with his own hand', where the confession is not recorded in the handwriting of the Magistrate, it can be admitted in evidence and acted upon if the Magistrate deposes under S. 533. (Ferrers, J. C. and Rupchand, A. J. C.) Salu Mangan v. Emperor.

AIR 1933 Sind 166 : Ind Rul (1933) Sind 194 : 144 IC 664 : 34 Cr LJ 808.

15. Memorandum—

(c) If conclusive.

——Effect of.

The certificate recorded by a Magistrate at the foot of confession is not conclusive and facts, leading the Court to think that the confession was not voluntary, can be proved. (Kanhaiya Lal, J. C. and Daniels, A. J. C.) Nar Singh v. Emperor.

AIR 1922 Oudh 302 : 73 IC 257 : 25 OC 229 : 24 Cr LJ 561.

15. Memorandum—

(d) Presumption.

——Presence of—Presumption.

Where there is no positive evidence that the precautions required by S. 164 were not taken and the certificate required by sub-S. (3) is duly appended to the record of the confession, the presumption is that the precautions described in the section were duly taken. The law does not anywhere state what or how many questions the Magistrate, who is about to record a confession, must make in order to satisfy himself in accordance with the directions in that section. AIR 1922 Lah 237, Ref. (Zafar Ali and Coldstream, JJ.) Majhi v. Emperor.

AIR 1927 Lah 682 : 104 IC 247 : 28 Cr LJ 807.

——Presence of — Presumption.

If, when a document is tendered in evidence at a trial purporting to be a confession of the accused, it is found to contain the memorandum required by S. 164 (3) a presumption arises under S. 80 of the Evidence Act that all the necessary formalities purporting to have been performed have in fact been performed and the document is admissible in evidence without further proof. (Broadway and Addison, JJ.) Partap Singh v. Emperor.

AIR 1925 Lah 605 : 93 IC 978 : 6 Lah 415 : 7 LLJ 482 : 27 Cr LJ 514.

16. Mode of recording and procedure.

(a) Administration of oath.

(b) Duty of Magistrate.

(c) Language.

(d) Time and place.

(e) Time for reflection.

16. Mode of recording and procedure.

——Ss. 164 and 364 — Procedure to be followed under S. 164 by Magistrates in recording confessions in detail laid down. (Radke, A. J. C.) Ghasi Ram v. State.

AIR 1952 Bhopal 25 : 1952 Cr LJ 1366.

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——S. 134 (2)—Proper recording of confession.

In matters of procedure, it is essential that the rules must be certain rather than wise, flexible rather than complete. Whether a confession has been properly recorded or not must, therefore, be left to be decided by the Judge before whom it is tendered as evidence. Whether it should be accepted or not will depend upon the wisdom and understanding of the trial Judge who knows the essentials of a fair trial. (Jagannadhadas and Panigrahi, JJ.) Suka Misra v. The State.

AIR 1951 Orissa 71.

——Recording of confession—Mode of —Principles to be borne in mind by Magistrates.

In recording confessions the Magistrate should bear in mind the following principles of law:

(i) Full and adequate compliance with the provisions of S. 164, Criminal Procedure Code, is imperative and its non-compliance goes to the root of the Magistrate's jurisdiction to record and reduces the statement recorded by him to a nullity.

(ii) Such compliance must not be undertaken in the spirit of being done as a matter of form but as a matter of essence.

(iii) Every enquiry must be made from the accused as to the custody from which he was produced and as to the custody to which he was to be consigned and the treatment that he had been receiving in such custody in case the Magistrate discovers on such enquiry that there is ground for such supposition he should give the accused sufficient time for reflection before he is asked to make his statement and should assure himself that during this time of reflection, he is completely out of the police influence.

(iv) Besides the warning specifically provided for in the first part of sub-s. (3) of S. 164, he should also, in plain terms, be assured of protection from any sort of apprehended torture or pressure from such extraneous agents as the police or the like in case he declines to make a statement.

(v) He should particularly be asked the reason why he is going to make a statement which would surely go against his self-interest in course of the trial and he should, further be told in order to remove any lurking suspicion in his mind that even if he contrives subsequently to retract the confession, it will be evidence against him still.

(vi) The Magistrate who is entrusted with the duty of recording confession of an accused coming from police custody or jail custody must appreciate his function in that behalf as one of a judicial officer and that he must apply his judicial mind to the task of ascertaining that the statement the accused is going to make is of his own accord and not on account of any influence on him.

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(vii) Lastly, he should also consider it expedient that satisfaction of his conscience as to the voluntary character of the statement is not the only act to be achieved by him but he should leave such materials on record in proof of compliance with the imperative requirements of the section as would satisfy the Court that sits on judgment in the case that the confessional statement was made voluntarily. In short, the provision of the statute must be complied with both in letter and spirit. (Ray C. J. and Narasimham, J.) Gurubaru Praja v. The King.

AIR 1949 Orissa 67 : ILR (1949) 1 Cut 207 : 51 Cr LJ 72.

——If an accused wishes to make a confession the Police must produce him before a Magistrate. The Magistrate, when recording the confession, should ascertain when the accused first expressed his willingness to confess and to record it in the confession. When the investigation by the Police is either conducted or continued after the accused has expressed his desire to confess, and his confession is recorded after the completion of the investigation, there is reasonable ground for apprehension that the confession is made to fit in with the result of investigation, so that it may be regarded as having been corroborated. (Divatia and Lokur, JJ.) Savlimiya Miyabhai v. Emperor.

AIR 1944 Bom 338 : 46 Bom LR 589.

——Confession, recording of — Provisions must be complied with.

A confession must be recorded in the manner prescribed for recording confession. Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden. (Grille and Gruer, JJ.) Karu v. Emperor.

AIR 1937 Nag 254 : 20 NLJ 103 : 9 RN 285 : ILR (1937) Nag 524 : 168 IC 976 : 38 Cr LJ 648.

——Criminal Circular I-6 of the Nagpur Judicial Commissioner regarding the recording of confessions, explained. (Grille and Gruer, JJ.) Nehru v. Emperor.

AIR 1937 Nag 220 : 9 RN 281 : ILR (1937) Nag 268 : 168 IC 962 : 38 Cr LJ 642.

——Confession — Rules framed by Local Government for recording confessions — Omission to follow rules.

Rules framed by the Local Govt. as regards recording of confessions under S. 164, Criminal P. C., salutary as they are, are intended for the guidance of Magistrates but they have not the effect of law and the mere omission of compliance in any particular respect is not per se sufficient to rule out the confession, if there has been no breach of the provisions of S. 164, Criminal P. C., which lays down the law on the subject and if there are grounds sufficient to satisfy the Court and to induce it to believe that the confession is voluntary.

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Although the absence of adequate motive is immaterial where the commission of the crime is clear, but where the prosecution case has not only failed completely as regards motive but also the evidence of the actual commission of the crime is not definite, the accused should not be convicted. (Bisheswar Nath and Nanavutty, JJ.) Nibar v. Emperor.

AIR 1933 Oudh 299 : 10 OWN 642 : 6 RO 10 : 144 IC 769 : 34 Cr LJ 838.

——Confessional statement before Police — Trial Court should not record the statement in truncated fashion. (Jackson and Cornish, JJ.) Garuswamy Chetty v. Emperor.

1931 MWN 725.

——Recording of — Must be proper.

The proper recording of confessions which can be shown on the face of them to be voluntary and apparently true is of the highest and supreme importance in criminal trials. (Raza and Nanavutty, JJ.) Prag v. Emperor.

AIR 1930 Oudh 449 : 7 OWN 909 : 1930 Cr C 1073 : 128 IC 215 : 6 Luck 335 : 32 Cr LJ 97.

——Ss. 164 and 288 — Statements inadmissible against accused — Use of, to contradict subsequent statements — Evidence Act, Ss. 145 and 155.

Statements taken under S. 164 and not covered by those of S. 288, Cr. P. Code are inadmissible in evidence against the accused. They can be used under Ss. 145 and 155 of the Evidence Act only for the purpose of contradicting the statements subsequently made in Court by the persons making those former statements. (Lindsay, J. C.) Puttu v. Emperor.

AIR 1914 Oudh 388 : 1 OLJ 753 : 17 OC 363 : 27 IC 196 : 16 Cr LJ 132.

16. Mode of recording and procedure—

(a) Administration of oath.

——Ss. 164 and 537 — Defects in recording — "Criminal proceedings" in S. 5, Oaths Act — Meaning — Recording of confession under S. 164, Cr. P. C., on oath — Propriety — Illegality if curable.

The expression "criminal proceedings" in S. 5 of Oaths Act denotes a proceeding before a Criminal Court as distinguished from a Civil Court. It does not mean only a proceeding relating to a case pending in a Criminal Court. Thus taking of a confession by a Magistrate under S. 164, Cr. P. C. are Criminal proceedings and where such confession is made on oath it comes within the ambit of S. 5 of Oaths Act, and the Magistrate acts illegally in recording it. The illegality, however, in the absence of any failure of justice is curable under S. 537, Criminal P. C., and the con-

CRIMINAL P. C. (V of 1898), S. 164—16. Mode of recording & procedure—(a) Administration of oath fession would be admissible. (Teja Singh and Sharif, JJ.) Karam Ilahi v. Emperor.

AIR 1947 Lah 92 : 225 IC 544 : 48 PLR 382 : 47 Cr LJ 772.

——Power of Magistrate to administer oath to deponent — Penal Code, Ss. 193, 194.

In recording a statement under S. 164, Criminal P. C., a Magistrate is empowered to administer to the deponent an oath or solemn affirmation and the statement so recorded can form the subject of an alternative charge under the perjury sections of the Penal Code. (Broadway and Abdul Qadir, JJ.) Emperor v. Parma Nand.

AIR 1933 Lah 321 : 14 L 507 : Ind Rul (1933) Lah 303 : 34 PLR 421 : 142 IC 776 : 34 Cr LJ 469.

——The statement recorded by a Magistrate is admissible in evidence under S. 164 whether taken on solemn affirmation or not. (Kincaid, J. C. and Aston, A. J. C.) Bahadur Rano Khaskheli v. Emperor.

AIR 1925 Sind 289 : 88 IC 7 : 19 SLR 71 : 26 Cr LJ 1063.

16. Mode of recording and procedure—
(b) Duty of Magistrate.

——S. 164 (3) — Recording of confession — Duty of Magistrate.

It is none of the concerns of the Magistrate recording confession to ascertain whether the confession is true. It is certainly his sacred duty to assure himself that the confession is in its true sense both free and voluntary. He should allow the accused a complete liberty to give his narrative in his own way and he should not put any interrogatories. He may ask questions if he finds that the narrative of the accused is ambiguous or inexplicable. But at that stage, his duty ends. It is not his duty to act as a Prosecutor with information as much as possible and derive the same from the accused. (Shukla and Shroff, JJ.) Koli Raja Dau v. United State of Saurashtra.

3 Sau LR 14.

——A Magistrate is expected to afford facilities to the accused not only when he is compelled by law to do so, but also when he has a discretion in the matter and the ends of justice require that the accused should be apprised of what certain prosecution witnesses had previously stated in proceedings under S. 164, Criminal P. C. (Niamatullah, J.) Bashir-ud-Din v. Emperor.

AIR 1932 All 327 : Ind Rul (1932) All 554 : 139 IC 330 : 33 Cr LJ 752.

——Duty to inform accused.

A Magistrate recording a confession under S. 164, Criminal P. C., should inform the accused that he is a Magistrate, but there is no illegality in an omission to do so where there is no indication before the trying Court that the accused was

CRIMINAL P. C. (V of 1898), S. 164—16. Mode of recording and procedure—(b) Duty of Magistrate unaware of the fact. (Coldstream and Jailal, JJ.) Mohinder Singh v. Emperor.

AIR 1932 Lah 103 : Ind Rul (1932) Lah 81 : 33 PLR 891 : 135 IC 209 : 33 Cr LJ 97.

——It is highly irregular for a Magistrate recording a confession to obtain from the police a report of what the accused is alleged to have stated to them, before he begins to record the confession. (Lawrence-Jenkins, C. J., and Mookerjee, J.) Jogjiban Ghose v. Emperor.

9 CLJ 663 : 13 CWN 861 : 2 Ind Cas 681 : 10 Cr LJ 125.

16. Mode of recording and procedure—
(c) Language.

——Ss. 164, 364.—Confession recorded in English —Validity.

A Magistrate is authorised under S. 364 to record a confession in English, if necessary. Though in a particular case it might be better if the confession is recorded in Hindi, recording it in English cannot be said to be against the provision of law. Where therefore the Magistrate had translated to the accused what he had himself recorded in English and after the accused had assured him that he had correctly recorded what he had said, the Magistrate made the accused affix his thumb impression, there is no reason to believe that there was in fact any irregularity in recording the confession or that it prejudiced the accused, if there was any. (Misra and Chandiramani, JJ.) Mendai Singh v. State.

AIR 1952 All 486 : 1951 All WR (HC) 30 : 1951 All Cr Cas 4 : 1951 All LJ 444 : 1952 Cr LJ 883.

——Ss. 134, 533 — Confession not recorded in language of accused but in English — Defect, if curable.

Where the confession is not recorded in the language of the accused though it could have been done, but it is recorded in English, the defect is curable under S. 533, Criminal P. C. (Varma and Meredith, JJ.) Emperor v. Kommoju Brahman.

AIR 1940 Pat 163 : 19 Pat 301 : 6 BR 577 : 12 RP 674 : 188 IC 57 : 41 Cr LJ 533.

——Different language.

Omission to record confession in the language used by the accused may be over-looked if he has not injured the accused in his defence. 7 P. R. 1899 Cr. Foll. (Harrison and Agha Haider, JJ.) Nawab v. Emperor.

AIR 1927 Lah 285 : 100 IC 821 : 7 AICR 562 : 28 Cr LJ 341.

——Ss. 164, 334 and 533— Statement of accused recorded in English and not vernacular— Admissibility of statements in evidence against accused at his trial.

There must be some evidence to presume that the statements of the accused recorded under S. 164 had to be recorded in English and that it was not possible to record them in the language in

CRIMINAL P. C. (V of 1898), S. 164—16. Mode of recording & procedure—(c) Language

which they were made. Otherwise there can be no justification under S. 364 for recording them in English and the presumption referred to in S. 80 Evidence Act cannot be made in respect of the record made in English. When in addition no evidence has been taken from the magistrate to show that these statements had been duly made by the accused S. 533 also cannot apply. The Sessions Judge acts wrongly in admitting in evidence the record of that against the accused at his trial. (Mr. Scott.) Bawa v. King-Emperor.

10 OC 112 : 6 Cr LJ 94.

16. Mode of recording and procedure—

(d) Time and place.

——Confessing accused sent back to police custody. There cannot be any hard and fast rule regarding the place of recording confessions or as to whether the deponent should after the confession be detained in judicial custody etc. Circumstances and exigencies of different cases might demand different courses to be adopted.

Held that in the circumstances, the Magistrate had not committed any irregularity, much less any illegality in recording the confession at his own residence and in sending back the accused to police custody after recording the confession. (Koshi C. J. and Menon, J.) K. N. Vijayan v. State.

AIR 1953 TC 402 : 1953 Ker LT 403 : ILR (1953) TC 514 : 1953 Cr LJ 1613.

——Confession taken at Magistrate's house—Validity.

Per Panigrahi J.—There is no specific rule which prohibits a Magistrate from recording a statement under S. 134 either at his house or in camp, wherever it may suit him.

Per Jagannadhadas J.—It is quite improper on the part of a Magistrate to record the confessional statement of the accused under S. 164 at his house without assigning any reason. (Jagannadhadas and Panigrahi, JJ.) Khalli Behera v. The State.

AIR 1951 Orissa 78 : 16 Cut LT 186.

——Ss. 164 and 533— Confession not recorded during court hours but on Sunday in contravention of R. 85, Criminal Rules of Practice—Defect is one of form and not of substance and does not invalidate confession — Madras Criminal Rules of Practice, R. 85 — (Obiter). (Govinda Menon and Krishnaswami Nayudu, JJ.) In re Karunthambi.

AIR 1950 Mad 579 : 1950 MWN 293 : 63 MLW 449 : 1950-1 MLJ 659 : 1950 MWN Cr 73 : 51 Cr LJ 1047.

——Confession — Place for recording.

Confessional statements should be recorded in a court-room, during court hours, unless there are special reasons to the contrary, which the prosecution are required to explain : 38 PLR 791, Rel. on. (Din Mohammad and Cornelius, JJ.) Emperor v. R. B. Lovett.

CRIMINAL P. C. (V of 1898) S. 164—16. Mode of recording & procedure—(d) Time and place

231 IC 408 : 48 Cr LJ 794 (Lah).

——Ss. 164 and 361— Recording of confession — Rules of Rangoon High Court in Notification No. 6, General, of 19-9-1946 requiring confession to be ordinarily recorded in Court and during court-hours —In exceptional cases rule may be relaxed— To avoid publicity and ensure safety, confession recorded at 6 a.m. in Senate Hall of Law Courts Building and not in open Court—Other formalities regarding giving of time for reflection and warning observed —Contravention of rule held though to be deprecated, did not render confession inadmissible : 52 Cal 67, Foll. (U On Pe, U San Maung and U Bo Gyi, JJ.) U Saw v. The Union of Burma.

1948 Bur LR 217.

——Confession should be recorded in Court room.

According to the Lahore High Court instructions, ordinarily speaking, confessional statements should be recorded in the Court room, and if, for some reason, they are not so recorded during the ordinary Court hours, some explanation should be furnished by the prosecution. (Dalip Singh, J.) Amar Singh v. Emperor.

AIR 1937 Lah 746 : 10 RL 391 : 39 PLR 453 : 173 IC 105 : 39 Cr LJ 262.

——Confession recorded in Dak Bungalow — Accused returned subsequently to Police custody—Recoveries.

To base a conviction upon the sole evidence of a subsequently retracted confession, which has been corroborated by certain discoveries both the confession and the discoveries must be beyond suspicion. A confession should be, unless there are exceptional reasons to the contrary recorded in open Court and during Court hours and the confessing accused should not be returned to the Police custody. Where the confession is taken in a Dak Bungalow before a Second Class Magistrate, without disclosing any reason for so doing and the accused was subsequently sent back to Police custody, it cannot be said that the confession and recoveries are free from doubt and the conviction based on such evidence cannot stand. (Young C. J. and Abdul Rashid, J.) Jahana v. Emperor.

AIR 1937 Lah 98 : 38 PLR 791 : 9 RL 458 : 166 IC 1003 : 38 Cr LJ 338.

——Confession if can be recorded in any place other than Court.

There is nothing in law to prevent a Magistrate from recording a confession in any other place than in open Court, and frequently, it is desirable that a confession should not be recorded in open Court. (Dunkley, J.) Tha Ka Do Maung v. Emperor.

AIR 1935 Rang 491 : 8 R Rang 363 : 160 IC 292 : 37 Cr LJ 280.

CRIMINAL P. C. (V of 1898), S. 164—16. Mode of recording & procedure—(d) Time & place

——Magistrate recording confession, otherwise valid, in his house—Legality.

Where a confession is otherwise valid, the mere fact of its having been recorded at the Magistrate's house does not vitiate it. (Agha Haider, J.) Ghulam Muhammad v. Emperor.

AIR 1934 Lah 675 (2) : 35 PLR 746 : 7 RL 673 : 155 IC 265 : 36 Cr LJ 683.

——It is not proper to record a confession in a Police Station or during the night. If the matter is urgent and the surroundings have to be accepted as unavoidable, exceptional care should be taken to observe very strictly the directions prescribed by the rules for recording confessions. (Harrison and Dalip Singh, JJ.) Ranbir Singh v. Emperor.

AIR 1932 Lah 204 : Ind Rul (1932) Lah 195 : 33 PLR 241 : 136 IC 19 : 33 Cr LJ 242.

——Holiday — Any place.

There is no provision of law which forbids a Magistrate from recording a confession on a Sunday or any other holiday and at a place other than the Court-House. (Tek Chand and Fforde, JJ.) Khanun v. Emperor.

AIR 1930 Lah 171 : 11 LLJ 461 : 1930 Cr C 179 : 125 IC 49 : 31 Cr LJ 759.

——The Code itself contains no provisions as to the confession being made in open Court. (Adami and Bucknill, JJ.) Nilmadhab Chaudhury v. Emperor.

AIR 1926 Pat 279 : 96 IC 509 : 7 AI Cr R 75 : 5 Pat 171 : 27 Cr LJ 957.

——Confessions — Record of— Procedure.

Confessions should be recorded in open Court. A Magistrate acts improperly in recording the confessions at a late hour of the night after the accused had been subjected to interrogation by the Police for a very long time. (Huda and Rankin, JJ.) Emperor v. Pramatha Nath Begahi.

AIR 1920 Cal 78 : 30 CLJ 503 : 55 IC 282 : 21 Cr LJ 266.

16. Mode of recording and procedure—

(e) Time for reflection.

——Time to compose himself to be given to accused — (Evidence Act (1872), S. 24) — (Punjab High Court Rules and Orders, Vol. III Chap. 13 R. 13 (1) (a)).

One method of bringing about satisfaction as to the voluntary nature of the confession is to give enough time to the person concerned to compose himself before recording his confession. (Chowdhry, J. C.) Kirpa v. The State.

AIR 1952 Him Pra 68 : 1952 Cr LJ 1495.

——Presence of police — Confession immediately after police custody — Confession recorded 15 minutes after accused had been taken out of custody — More time held ought to have been allowed to elapse.

Where the accused was young and his confession was recorded only ten to fifteen minutes after he had been taken out of police custody :

CRIMINAL P. C. (V of 1898), S. 164—16. Mode of recording & procedure—(e) Time for reflection

Held, that a longer time should have been allowed to elapse between the custody of the police and his examination before the Court. (Sinha and Mathur, JJ.) Jagmal v. Rex.

AIR 1948 All 211 : 1948 AWRHC 68 : 1948 OA HC 68 : 1948 ALJ 106 : ILR (1948) All 259 : 49 Cr LJ 243.

——S. 164 (3) —Accused must be given sufficient time to reflect whether he should make confession or not.

After warning the accused that he was not bound to make a confession and that if he did so, it may be used as evidence against him, the Magistrate must give the accused sufficient time to reflect whether he should make a confession or not. Time of 15 minutes is not sufficient for reflection. (Das and Ray, JJ.) Punia Mallah v. Emperor.

AIR 1946 Pat 169 : 24 Pat 646 : 1945 PWN 397 : 228 IC 51 : 13 BR 120 : 48 Cr LJ 30.

——Accused's right to time for reflection.

There is no statutory period of time to which an accused is entitled for making a confession after he is sent to the Magisterial custody. All that is required is that he must have sufficient time for reflection, and the mere fact that the confession was made one day after the accused was handed over to the Magisterial custody would not by itself show that he had no sufficient time. (Divatia and Lokur, JJ.) Chavadappa Pujari v. Emperor.

AIR 1945 Bom 292 : 47 Bom LR 63 : 1946 Bom Rul 23 : 221 IC 86 : 47 Cr LJ 51.

——Necessity of ensuring.

It is the duty of a Magistrate when a person is brought before him under S. 164, Criminal P. C., whether as an accused or as a proposed witness, to see that the statement made by the person is voluntary. One simple method of securing this, apart from the questions given on the printed form, is to see that the person is left alone and is given half an hour or so to collect his mind before his statement is taken down. (Dalip Singh and Currie, JJ.) Jahangiri Lal v. Emperor.

AIR 1935 Lah 230 : 7 RL 58 : 150 IC 1056 : 35 Cr LJ 1180.

——Accused if to be allowed sufficient time for reflection.

There is nothing to show that warning should be given to the accused immediately before the confession is recorded or that it should be repeated again just before the prisoner's arrival before the Magistrate. Where the Magistrate allows the accused seven hours to think over the question and to decide whether he would make a confession or not and then records the confession, such recording is proper. (Percival, J. C. and Rupchand, A. J. C.) Dur Mahomed v. Emperor.

AIR 1930 Sind 305 : 1930 Cr C 1142 : 128 IC 684 : 32 Cr LJ 178.

CRIMINAL P. C. (V of 1898), S. 164

17. Oral confession—Discretion to record.

——Ss. 164 and 533—Offence under S. 161, Penal Code—Magistrate going to trap accused —Confession to Magistrate not reduced to writing is admissible in evidence — (Evidence Act (1872), S. 91). (Passey and Chopra, JJ.) State v. Madan Mohan.

AIR 1953 Pepsu 182 : 1953 Cr LJ 1700.

——Statement may be recorded by Magistrate on request of witness himself—Police need not send him—But such recording depends on Magistrate's discretion.

It is not necessary under S. 164 that the Magistrate should be moved by the police in order that he might record a statement. There may be instances where the police may not desire to have recorded the statement of a witness for some reason or other. In such a case, there is nothing preventing the witness to go to the Magistrate and request him to record the statements and if a Magistrate records his statement and transmits the same to the Court where the enquiry or the trial is to go on, there is nothing wrong in his action. But such a thing will be very exceptional, as there is always a discretion in the Magistrate to refuse to record the statement. Ordinarily, when a police officer requests the Magistrate to record the statement of a witness on oath under S. 164, Criminal P. C., such a request will not be refused by the Magistrate. But when a private party seeks to invoke the powers of a Magistrate under S. 164, Criminal P. C., the Magistrate has got a very wide discretion in acting or refusing to act.

It is not obligatory upon the Magistrate to record the statement of an individual simply because an application is made to him that such a statement may be necessary in an enquiry or trial that may develop as a result of the investigation. (Govinda Menon, J.) In re C. W. Casse.

AIR 1948 Mad 489 : 61 MLW 402 : 1948 MWN 401 : 1948 AWR Sup 103 : 1948-1 MLJ 404 : ILR (1949) Mad 206 : 50 Cr LJ 28.

——Ss. 164, 1 (2)— Confession under S. 164— Recording of confession, whether compulsory — Non-compliance with S. 164 — S. 533, whether prevents it from being ruled out.

Section 164, Criminal P. C., does not, in terms, require a Magistrate, to whom a confession is made, to record it at all. So long as the English language has its present meaning, "may" cannot mean "must"; so S. 164 clearly leaves it optional to the Magistrate whether he records a confession or not. If he does record it, then the section makes it compulsory that he shall record it in a certain way. As, however, S. 91, Evidence Act, only so far as this matter is concerned, refers to "all cases in which any matter is required by law to be reduced to the form of a document", it has no application. In cases where it does apply, i. e., when the confession has been reduced

CRIMINAL P. C. (V of 1898), S. 164—17. Oral confession — Discretion to record

to writing but S. 164 has not been fully complied with, then of course, S. 533, Criminal P. C., becomes in terms a "special provision" referred to in S. 1 (2), Criminal P. C., and prevents the confession being ruled out as entirely incapable of proof. (Baguley, J.) Nga Thein Maung v. Emperor.

AIR 1936 Rang 350 : 9 R Rang 64 : 164 IC 162 : 37 Cr LJ 920.

——Oral confession— Confession not recorded — Presumption.

Confession intended to be admitted in evidence against persons accused of criminal offences should ordinarily be recorded with all the precautions and in the manner prescribed by S. 164, Criminal P. C. If this salutary provision of the law is ignored in favour of an oral confession, the trial Court will be entitled to presume, unless satisfied tc the contrary that the reason for adopting the oral method is that the accused has declined to commit himself to a written confession of the nature contemplated by S. 164, Criminal P. C. The result will be that in cases in which it is sought to rely on such an oral confession which has been subsequently retracted, very little weight will be given to the oral confession, unless there is independent evidence to corroborate the confession in such a way as to establish beyond doubt that the confession is a true statement which really connects the accused with the crime. (Young C. J. and Sale, J.) Karam Singh v. Emperor.

AIR 1936 Lah 8 : 16 L 454 : 37 PLR 745 : 8 RL 492 : 160 IC 111 : 37 Cr LJ 231 (DB).

——Recording of confession, if obligatory.

Section 164, Criminal P. C., in terms does not make it obligatory upon a Magistrate to record a confession. If an accused person makes a confession during a Police investigation, or before the commencement of the inquiry or trial, then it is open to a Magistrate of any of the classes specified in that section to record the confession, and if he does so, he is bound to record it in the manner laid down in that section. Section 164 should not be interpreted as meaning that if the Magistrate is satisfied that the accused is making the confession voluntarily and is not doing so under any inducement, threat or promise or coercion, then he is bound to record the confession. The language of the section leaves it optional to the Magistrate to record the confession or not as he thinks fit. He is not bound to record it even if he be clearly of opinion that the person is willing to make a perfectly voluntary confession. The mere reference to S. 91, Evidence Act, contained in S. 533, Criminal P. C., cannot be taken to imply that a Magistrate hearing an oral confession made by an accused person in the course of an investigation is bound to record the confession in the manner laid down

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in S. 164. The language of that section is "may record" not "shall record".

Under S. 164, Criminal P. C., it is not obligatory on a Magistrate holding an investigation or preliminary inquiry under S. 159 of the Code, to record in writing a confession made to him by an accused person and such confession may be proved by the oral testimony of the Magistrate. As it is not obligatory on a Magistrate to record a confession under S. 164, oral proof of an unrecorded confession made to a Magistrate before the inquiry or trial is not excluded by the terms of S. 91, Evidence Act. (King and Bajpai, JJ.) Sidheshwar Nath v. Emperor.

AIR 1934 All 351 : 1934 ALJ 178 : 7 RA 280 : 3 AWR 459 : 56 A 730 : 152 IC 174 : 36 Cr LJ 45.

——Evidence Act (I of 1872), S. 26 —Admissibility —Suspicion that accused may make untrue confession—Fact that confession is made more than once—Relevancy.

An oral confession to a Magistrate is admissible in evidence under S. 26, Evidence Act, and cannot be affected by the provisions of S. 164, Criminal P. C., which refer only to confessions which are recorded and not to oral confessions.

If in a criminal trial, there is ground for suspicion that the accused was prepared to make an untrue confession, the fact that he made it on more than one occasion is no particular reason for believing it. Nor does the fact that the accused did not withdraw his confession when he made his first statement in the committing Court, necessarily prove that the confession was true. (Smith and Allsop, JJ.) Itwari v. Emperor.

AIR 1933 Oudh 432 : 10 OWN 923 : 6 RO 226 : 147 IC 113 : 35 Cr LJ 303.

——Magistrate associated with investigating officer— Admission by accused in presence of Magistrate — Magistrate not recording admission under S. 164 but making written memorandum — Oral evidence of Magistrate is admissible and written memorandum though inadmissible can be used to refresh memory — Evidence Act (1872), Ss. 26 and 159.

Where during the investigation of a criminal case a Magistrate is associated with the investigating officer and in the presence of such Magistrate the accused points out places alleged to be connected with the crime and makes admissions which do not lead to the discovery of any fact and the Magistrate does not record the admissions in accordance with the provisions of S. 164, Criminal P. C., but makes a memorandum of the conduct and admissions of the accused, the oral evidence of the Magistrate is admissible and his memorandum is not admissible though he can refresh his memory under S. 159, Evidence Act, when under examination, by referring to the memorandum:

The fact that the Magistrate is empowered to record the confession of an accused person under

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S. 164 would not affect the question of the admissibility of such evidence. (Addison, Coldstream and Jai Lal, JJ.) Abdulla v. Emperor.

AIR 1933 Lah 716 : 14 L 290 : 34 Cr LJ 1025 (2) (F. B.).

(Overruled in AIR 1936 P. C. 253 (2) : 37 Cr LJ 897).

——Admissions before trial need not be recorded —Oral evidence of such statements is admissible —Distinction between Ss. 164 and 364.

S. 364 Cr. P. C. makes it obligatory upon the magistrate who examines a person as an accused, to record the whole of the questions put to him and answers given by him. But statements whether in the nature of information given by witnesses about a crime or admissions by persons who have taken part in a crime, if made during the course of an investigation but before the commencement of trial or inquiry are governed by S. 134, which permits but does not compel the magistrate to record the same.

Oral evidence of a magistrate who watches investigation conducted by the police under instructions given to him under S. 159, Cr. P. C. and who did not himself make any independent inquiry or record any statements from the available witnesses are admissible to prove that the accused confessed the crime to him though the statement was not recorded under S. 164. (Spencer and Kumaraswami Sastri, JJ.) Tangedupalle Pedda In re.

AIR 1922 Mad 40 : 45 Mad 230 : 42 MLJ 37 : 69 IC 264 : 30 MLT 107 : 14 LW 542 : 1921 MWN 779 : 23 Cr LJ 680.

(Overruled in AIR 1936 P. C. 253 (2) : 37 Cr LJ 897.)

——As regards the necessity for recording statements in manner provided by S. 164, no distinction can be drawn between a statement made by an accused person and a confession made by him. 8 CWN 22 and 45 Cal 557, Foll. (Teunon and Ghose, JJ.) Emperor v. Lalit Mohan.

AIR 1921 Cal 111 : 62 IC 578 : 25 CWN 788 : 49 Cal 167 : 22 Cr LJ 562.

——Statement of accused not recorded — Magistrate cannot give oral evidence thereof.

The accused made no confession, and the statement which he did make was for that reason not recorded in the manner provided in S. 164. There being no record, the Magistrate was then required and permitted to give oral evidence regarding the statement made to him by the accused. Held: no distinction can be drawn between a statement made by an accused person and a confession made by him. The statement made should be recorded as provided in S. 164, and the Magistrate's evidence regarding the unrecorded statement is inadmissible. (Teunon and Ghose, JJ.) Legal Remembrancer v. Lalit Mohan Singh.

AIR 1921 Cal 111 : 49 Cal 167 : 25 CWN 788 : 62 IC 578 : 22 Cr LJ 562.

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——Ss. 164, 364 and 533 — Oral confession before Magistrate — Inadmissible in evidence — Evidence Act, S. 9.

Per Shah, J.—The oral confession of guilt made by an accused before a Magistrate is inadmissible in evidence. Hayward, J.—The oral confession was prima facie admissible as proved by the testimony of the Magistrate. (Shah and Hayward, JJ.) Emperor v. Maruti Santu More.

AIR 1920 Bom 322 : 54 IC 465 : 21 Bom LR 1065 : 21 Cr LJ 65.

——Confession to magistrate not recorded under S. 164, because confession appeared not to be voluntary— Magistrate examined and confession proved—Admissibility of confession.

See Evidence Act, S. 24.

2 Cr LJ 811 (Oudh).

18. Proof.

——Ss. 164 (3) and 533 — Proof of compliance with provision of S. 164 (3)—Admissibility of oral testimony of Magistrate.

The oral evidence of the Magistrate purporting to have recorded a confession under Ss. 164 and 364 is admissible to prove that he had complied with the provisions of S. 164 requiring him to satisfy himself as to the voluntary nature of the confession by questioning the accused, although the recorded confession does not show the compliance on the face of it. The formal defect arising from such non-compliance is cured under S. 533 by the evidence of the Magistrate. (Chowdhry J.C.) Ranjit Singh v. State.

AIR 1952 Him Pra 81 : 1952 Cr LJ 1720.

——Confession when can be used—Evidence Act (1872), Ss. 18 and 21.

Before the confession can be put to any use it is necessary not only that the whole of it be proved but it be also proved that the requisite formalities had been observed in recording the confession. (Chowdhry, J. C.) Laldin v. The State.

AIR 1952 Him Pra 3 : 1952 Cr LJ 133.

——Evidence of Magistrate, not to prove any confession but what was said by person and sub-Inspector of Police to accused and what accused actually did— Evidence is admissible— Evidence Act (1872), S. 91. (Seth, J.) Jagannath Gupta v. Rex.

AIR 1950 All 9 : 51 Cr LJ 229.

——Confession not duly recorded—Other evidence of confession—Admissibility.

In the absence of any proof that the confession made to a Magistrate has been duly recorded, on other evidence is admissible to prove the confession : AIR 1936 P C 253 and A I R 1937 Nag 136, Rel. on. (Sen, J.) Balkrishna v. Emperor.

AIR 1948 Nag 245 : 1947 NLJ 310 : 49 Cr LJ 331.

CRIMINAL P. C. (V of 1898), S. 164—18. Proof

——Magistrate, if can give oral proof of confession.

Oral proof by a Magistrate of a confession which he could have recorded is inadmissible, for when the Legislature has prescribed a particular mode of proof, no other method will suffice. (Young C. J. and Ram Lall, J.) Akbar Badr Din v. Emperor.

AIR 1938 Lah 594 : 11 RL 339 : 40 PLR 890 : 177 I 617 : 39 Cr. LJ 907 (2).

——Section 26, Evidence Act is very wide in its terms, and there is nothing in that section that limits its operation to Magistrate specially empowered under S. 164, Criminal P. C. The Evidence Act recognises that the confession other than one formally recorded under Ss. 164 and 364 of Criminal P. C., can be admitted in evidence. Where the accused was in the custody of the Police, but he made the confessional statement in the immediate presence of the Magistrate and the confession had been taken down without the precautions that such a confession made under Ss. 164 and 364 requires, there is nothing which prevents this statement being proved against him, but it cannot be proved in the same manner as if it were a confession recorded with all the required formalities under Ss. 164 and 364, Criminal P. C. (Davis J. C. and Lobo, A. J. C.) Nowkar Moubdino v. Emperor.

AIR 1937 Sind 212 : 10 RS 73 : 31 SLR 460 : 170 IC 827 : 38 Cr LJ 968.

——Ss. 164, 512 — Presumption of genuineness—Recording Magistrate, if should be examined.

Where statements of witnesses have been recorded under Ss. 164 and 512, Criminal P. C., they bear the presumption of being genuine and it is not necessary that the Magistrate who recorded them should be examined in order to corroborate them. (Varma and Rowland, JJ.) Emperor v. Lalji Rai.

AIR 1936 Pat 11 : 16 PLT 730 : 2 BR 180 : 8 RP 344 : 160 IC 181 : 37 Cr LJ 235.

——Oral evidence by officer recording confession.

Where the provisions of S. 164, Criminal P. C., have not been complied with and the Magistrate recording the confession is not competent to do so and the record of the statement prepared by the officer concerned is not admissible; he can come and give evidence as to the facts related to him by the person purporting to make a confession, if he remembers them or if after refreshing his memory from the record made at the time, he can recollect them sufficiently to give evidence regarding them independently of the written record. (Abdul Qadir and Rangilal, JJ.) Mangal Singh v. Emperor.

153 IC 121 : 35 PLR 349 : 7 RL 381 : 36 Cr LJ 287.

——Can prove confession.

A confession or an incriminating statement made in the presence of a Magistrate by an accus-

CRIMINAL P. C. (V of 1898), S. 164—18. Proof

ed person while in police custody who is not produced before the Magistrate with a view to record his confession can be proved by oral testimony of the Magistrate when it has not been reduced to writing. In absence of any provision of law making it obligatory on the part of a Magistrate to record a confession it is not a matter required by law to be reduced to the form of a document. (Jai Lal and Currie, JJ.) Jog Raj v. Emperor.

AIR 1930 Lah 534 : 129 IC 289 : 1930 Cr C 682 : 32 Cr LJ 290.

——Examination of Magistrate — Subsequent examination of witnesses.

An honorary Magistrate who had recorded a statement of a witness under S. 164 was examined as the very first witness to prove the statement before the witness himself was examined, with a view that the aforesaid witness would resile from part of the statement so recorded to save one of the accused.

Held, that this should not have been permitted. The statement could only be recorded in evidence for certain limited purposes and only after examining that aforesaid witness. (Wild, J C. and Rupchand, A. J. C.) Mahomad Khan v. Emperor.

AIR 1930 Sind 308 : 1930 Cr C 1145 : 128 IC 673 : 32 Cr LJ 172.

——Magistrate can prove.

Any Magistrate is competent to hold a test identification and if he is not empowered to deal with the matter under enquiry he can prove the statement made before him under the provisions of S. 157, Evidence Act. S. 164, Cr. P. C., covers the case where a Magistrate acts under this section and records a statement made to him. (Chotzner and Gregory, JJ.) Samiuddin v. Emperor.

AIR 1928 Cal 500 : 32 CWN 616 : 10 AI Cr R 223 : 109 IC 225 : 29 Cr LJ 497.

——Admissibility — Procedure.

S. 364, Cr. P. C. makes it obligatory upon the Magistrate who examines a person as an accused, to record the whole of the questions put to him and answers given by him. But statements whether in the nature of information given by witnesses about a crime or admissions by persons who have taken part in a crime, if made during the course of an investigation but before the commencement of trial or inquiry are governed by S. 164, which permits but does not compel the Magistrate to record the same. Oral evidence of a Magistrate who watches investigation conducted by the police under instructions given to him under S. 159, Cr. P. C. and who did not himself make any independent inquiry or record any statements from the available witnesses are admissible to prove that the accused confessed the crime to him though the statement was not recorded under

CRIMINAL P. C. (V of 1898), S. 164—18. Proof

S. 164. (Spencer and Kumaraswami Sastri, JJ.) Tangedupalle Pedda Obigadu v. Pullassi Pedda.

AIR 1922 Mad 40 : 42 MLJ 37 : 45 Mad 230 : 30 MLT 107 : 69 IC 264 : 14 MLW 542 : 1921 MWN 779 : 23 Cr LJ 680.

(Overruled in AIR 1936 P. C. 253 (2) : 37 Cr LJ 897)

——Ss. 164, 4 (1) (m), 288, 292 — Proof of statement made before a Magistrate under S. 164, proof of and right of reply of defence — Evidence Act (1872) S. 80.

Statement made by a witness on oath before a Magistrate under section 164, forms part of the Court's record, and need not be formally proved. The statement under S. 164 does not need to be adduced. Since it already forms part of the record the court may refer to it. The use of it by the defence to contradict the witness, does not rob the defence of their right of reply, because that statement is a document within the terms of S. 80, Evidence Act which not only mentions a "judicial proceeding" (defined in s. 4 (1) (m), Cr. P. C.), but speaks of "any officer authorized by law to take such evidence" and the Court must presume that it is a correct record of what the witness said to the Magistrate.

A Magistrate would be asked whether he deposed a certain thing 2 or 3 years ago in a foreign Court, and he might deny all knowledge of having deposed in that Court, and then it would probably be necessary to prove the identity of the witness, but where a witness admits that a certain Magistrate did recently record his statement, it is not necessary formally to prove the previous statement. (Rendall, J. A.) Emperor v. Nanji Jetha.

19 KLR 57 : 10 Cr LJ 24 (Kathiawar).

——Confession not recorded as required by S. 164 —No evidence can be given to prove it—(Evidence Act (1872) S. 91).

A confession made in the course of an investigation, if not recorded as required by S. 164 Cr. P. C. cannot be admitted in evidence. It being a matter required by law to be reduced in the form of a document S. 91 Evidence Act applies. (Tirkell White C. J. and Fox, J.) Nga Ta Pu v. King Emperor.

2 LBR 19.

19. Questioning.

(a) Failure to question.
(b) General.
(c) Nature and limits of.
(d) Record of questions and answers.

19. Questioning —

(a) Failure to question.

——"Upon questioning the person."

The mere fact that the Magistrate did not ask the accused as to why he was making the confession does not detract from the voluntary

CRIMINAL P. C. (V of 1898), S. 164—19. Questioning —(a) Failure to question

nature of the confession when the Magistrate took sufficient pains to satisfy himself that the confession was being made voluntarily. (Wanchoo C. J. and Bapna, J.) Mohan v. State.

1951 Raj LW 242.

——S. 164 (3) — Absence of questions to deponent —Effect.

Where the column intended for recording questions in the form prescribed for recording of confessions contains no questions whatsoever, but merely the warning which the Magistrate gave the deponent, there is no compliance with that part of the statute which requires the Magistrate to question the deponent for the purpose of satisfying himself that the statement about to be made will be a voluntary one. This is not a defect of mere form only and cannot be cured under S. 533, Cr. P. C. It is a case where there has been a disregard or violation of the mandatory provisions of S. 164 and this makes the confession inadmissible in evidence. (Agarwala and Das, JJ.) Baldeo Musahar v. Emperor.

AIR 1947 Pat 281 : 25 Pat 391 : 13 BR 180 : 27 PLT 315 : 228 IC 296 : 48 Cr LJ 86.

——Ss. 164 (3) and 533 — Failure to put questions to accused to ascertain whether he was confessing voluntarily renders confession bad and inadmissible.

The provision of S. 164 (3) requiring the Magistrate to put questions to the accused in order to ascertain whether his confession was being made voluntarily is of a substantial character and not merely a matter of form. Non-compliance with it renders the confession bad in law and inadmissible. The defect cannot be cured under S. 533: AIR 1940 Pat 163, Rel. on. (Das and Ray, JJ.) Punia Mallah v. Emperor.

AIR 1946 Pat 169 : 24 Pat 646 : 1945 PWN 397 : 228 IC 51 : 13 BR 120 : 48 Cr LJ 30.

——S. 164 (3) —Questions required not asked by Magistrate—Defect, if curable under S. 533.

By using the provisions of S. 533, Criminal P. C., a defect of form can be removed, but not a defect of substance. Where the Magistrate is able to say in Court that he had asked the necessary questions but had forgotten to record them, then S. 533 would be applicable; and S. 91, Evidence Act, will cause no difficulty since S. 533 expressly states that it shall not do so. But where the Magistrate does not or cannot supply the defect in the written form with oral evidence, S. 533 cannot help. If no questions were actually asked, S. 533 would not help; but if the Magistrate's evidence shows that the questions were asked, then that is merely a defect of form and S. 533 will cure it. (Varma and Meredith, JJ.) Emperor v. Kommoju Brahman.

AIR 1940 Pat 163 : 19 Pat 301 : 6 BR 577 : 12 RP 674 : 188 IC 57 : 41 Cr LJ 533.

CRIMINAL P. C. (V of 1898), S. 164—19. Questioning —(a) Failure to question

——Ss. 164, 364, 533—Confession recorded without asking any question to ascertain whether confession is voluntary.

The provisions of S. 164 (3), Criminal P. C., are mandatory. The Magistrate must ask the accused questions designed to ascertain and to satisfy himself whether the confession is being made voluntarily or not. It would be going too far to say that the questions must be in any special form, for S. 164 does not prescribe that; but clearly there must be some question or questions designed to reveal whether the statement is being made voluntarily. To ask a question which can only test the accused's memory is not a compliance with the provisions of this section. Where no questions to ascertain whether the statement is voluntary or not are put the Magistrate has no jurisdiction to record a confession. Such a confession is inadmissible. (Varma and Meredith, JJ.) Emperor v. Kommoju Brahman.

AIR 1940 Pat 163 : 19 Pat 301 : 6 BR 577 : 12 RP 674 : 188 IC 57 : 41 Cr LJ 533.

——Ss. 164 and 533—Failure of the Magistrate recording a confession to question the accused in order to satisfy himself that the accused was making the confession voluntarily, is a radical and fatal defect which cannot be cured by S. 533, Criminal P. C.

The fact that the Magistrate was satisfied from observation that the accused was making the confession voluntarily does not dispense with the necessity of questioning the accused.

Provided the Magistrate satisfies himself by putting questions and hearing answers, that the prisoner before him is making a voluntary confession, it is unnecessary for him to record the questions and answers; it is sufficient if he complies with the letter of the law. (Harrison and Dalip Singh, JJ.) Ranbir Singh v. Emperor.

AIR 1932 Lah 204 : 33 PLR 241 : Ind Rul (1932) Lah 195 : 136 IC 19 : 33 Cr LJ 242.

——When the Magistrate, while recording the confession of an accused, does not question him as to whether the accused was making the said confession voluntarily, that confession is inadmissible. (Dalip Singh, J.) Gian Chand v. Emperor.

33 PLR 415.

——Where before recording the confession the Magistrate, although he stated that he was satisfied that the confessions were made voluntarily, failed to question the confessants whether they were making a voluntary statement.

Held, that provisions of S. 164 are not complied with and the confessions are therefore not admissible. 2 Lah. 325, Foll. (Shadi Lal, C. J. and LeRossignol, J.) Khushi Muhammad v. The Crown.

AIR 1924 Lah 481 : 81 IC 627 : 6 LLJ 166 : 25 Cr LJ 979.

CRIMINAL P. C. (V of 1898), S. 164—19. Questioning —(a) Failure to question

——Failure to question is fatal — Confession to the husband of kidnapped girl in the presence of police is not admissible.

Before recording the confession the Magistrate failed to question the accused as to whether he was making the confession voluntarily. Held this defect is a fatal one and renders the confession inadmissible in evidence. Nor the oral confession said to have been made on that very day by accused to the husband of the kidnapped girl in the presence of the police can be taken into consideration against him. 2 L. 325. Foll. (Shadi Lal, C. J.) Lachhi Ram v. Emperor.

AIR 1923 Lah 330 : 73 IC 260: 24 Cr LJ 564.

——Ss. 164, 533 — Failure of Magistrate to ask whether confession voluntary is a fatal defect.

S. 164 of the Cr. P. C. makes it imperative for the Magistrate before recording a confession made to him in the course of a Police investigation, to question the person making it as to whether it is made voluntarily. Telling an accused person that he should make his statement voluntarily and questioning him as to whether he is making it voluntarily are two very different things. The omission to question the appellant before recording his confession under S. 164 as to whether he is making it voluntarily is a material omission which prejudices him and the defect is a fatal one, not curable by S. 533, and the confession must, therefore, be excluded from evidence. (Shadi Lal, C. J. and Martineau, J.) Farid v. Emperor.

AIR 1922 Lah 237 : 2 Lah 325 : 5 PWR 1922 Cr : 4 UPLR (L) 33 : 65 IC 613 : 23 Cr LJ 149.

——S. 164 (3)— Record of confession — Duty of Magistrate.

It is the imperative duty of a Magistrate, before recording a confession, to carefully examine the accused person and, to the best of his ability, ascertain that he is not wishing to speak owing to inducement, threat or promise, but that his confession is purely voluntary. The omission of the Magistrate to question the accused, before recording the confession, is a fatal defect rendering the confession inadmissible. Where the Magistrate asked the accused only once at the end of his statement whether he confessed voluntarily or was induced to do so, it was held that it was not a sufficient compliance of S. 164 (3). (Hartnoll, J.) Shwe Sin v. King-Emperor.

3 LBR 213 : 12 Bur LR 237 : 4 Cr LJ 385.

19 Questioning—

(b) General.

——Magistrate to satisfy himself.

Where suspicious circumstances are present in that even though the accused was willing to make a confession, and that he was produced before the Magistrate for the confession only after a lapse of six days and after he had been produced twice before for a remand, it is necessary for the Magistrate before he records the confession to take any steps to satisfy himself that the confession was being made voluntarily. In such circumstances, the mere putting of stereotyped questions to the accused cannot be held to render the confession voluntary. (Chowdhry, J. C.) Lala v. State.

AIR 1953 Bilaspur 27 : 1953 Cr LJ 1361.

——Mode of recording confession and procedure.

Section 164, Criminal P. C., corresponding to S. 168, Hyderabad Criminal P. C. does not compel a Magistrate to put questions to the accused; he can be asked to give the story in his own way. The idea is that it must be a spontaneous narrative. The Indian High Courts have deprecated the practice of putting questions and eliciting answers. The idea of putting questions also does not appeal to common sense because a Magistrate could put questions only if he had before him, a note of what the accused was going to say. (Shrinivasachari, J.) Abdul Munim Khan v. State of Hyderabad.

AIR 1953 Hyd 145 : ILR (1951) Hyd 895 : 1953 Cr. LJ 785.

——'Upon questioning the person' — Record of confession after adequate warnings—Magistrate is not bound to repeat warnings on second day on which recording is continued—(High Court Rules and Orders —Madras Criminal Rules of Practice, R. 85).

Under S. 164 (3), Criminal P. C., it is sufficient if before commencing to record a confession, a magistrate puts the necessary questions required by S. 164 Cri. P. C. to the accused and it is not mandatory that he should keep on repeating these questions to him after every break in the recording of a long confession. There is nothing in S. 164, Cr. P. C., or even in Rule 85 of the Criminal Rules of Practice which requires a Magistrate to put all these questions afresh after any break in the recording of a confession, say after a luncheon interval or the next day.

Consequently, an omission to repeat the warnings on the second day on which the recording of the confession is continued will not render the confession inadmissible in evidence as not having been voluntarily made.

It is extremely difficult to split up a confession made one day and continued the following day into something partly admissible and partly inadmissible and either the whole confession should be admitted or rejected. 48 Cri L J 30 and 26 Cri L J 782, Diss. from. (Govinda Menon and Mack, JJ.) Kakana Ramana Reddy, In re.

AIR 1953 Mad 74 : 1952 Mad WN Cr 189 : 1952 Mad WN 741 : 1952—2 MLJ 501 : ILR (1953) Mad 417 : 1953 Cr LJ 264.

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——Substantial compliance with R. 85 of the Madras Criminal Rules of Practice — (Madras Criminal Rules of Practice, R. 85).

Where before recording the confession the Magistrate put the following questions to the accused "Did the police offer inducements to you that you would be released if you make a statement before Magistrate in Court? Have you understood that the statement you give will be used against you?"

'Held' that there was a substantial compliance with the requirements of Rule 85, although the word "approver" was not actually imported into the question, and no specific warning that it was not intended to make him an approver was given. (Mack and Krishnaswami Nayudu, JJ.) In re Ramaswami.

AIR 1952 Mad 411 : 1951 Mad WNCr 277 : 1951 —2 MLJ 630 : 1951 Mad WN 857 : 1952 Cr LJ 853.

——Confession must be voluntary — Magistrate must question accused with view to discover whether accused confesses voluntarily.

A Magistrate recording a confession of an accused must question him with a view to discovering whether he confesses voluntarily, and this questioning must be in pursuance of a real endeavour to find out the object of it, the requirement not being satisfied by putting a few formal questions.

An attempt must be made by the Magistrate to elicit facts from the accused to help him in determining whether the statements were made voluntarily and were not made under improper inducement. (Hemeon and Sen JJ.) Mt. Bhukhin v. Emperor.

AIR 1948 Nag 344 : ILR (1948) Nag 147 : 1948 NLJ 489 : 49 Cr LJ 561.

——No form of questions is prescribed by S. 134 (3) from which Magistrate must satisfy himself that he believes that confession was made voluntarily — Defect in compliance with Ss. 164, 533.

A confession recorded under S. 164, Criminal P. C., cannot be said to be bad merely because it does not disclose all the questions put and answers received. All that the law requires is that the Magistrate should put some questions to the accused so that it may appear satisfactorily that the accused was making a voluntary statement. No form of questions is prescribed by S. 164 (3) from which the Magistrate must satisfy himself that he believes the confession was made voluntarily. The questions recorded as having been put and the answers given as well as the demeanour of the accused may convince the Magistrate that the confession was a voluntary one. Moreover, under S. 533, a defect in the compliance with the provisions of Ss. 164 or 364 can be cured by evidence taken by the Court before which the confession or statement of the accused person is tendered.

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Held, that the confession was a voluntary confession and was admissible in evidence. (Manoharlall and Rowland, JJ.) Emperor v. Dubai.

AIR 1942 Pat 113 : 8 BR 129 : 21 Pat 153 : 14 RP 259 : 196 IC 852 : 43 Cr LJ 90.

——Mere giving of warning to accused not sufficient — Magistrate must record reasons for believing statement as voluntary.

It is not enough for a Magistrate recording the confession of an accused to give him a warning, but it is essential that he should put question to satisfy himself that the confession was in fact voluntary, and the question with its answer must be recorded. It is not enough that the Magistrate was satisfied as to the confession being voluntary, but the Courts before whom the confession is used must have materials on which they can be satisfied that the confesion was in fact voluntary. The Magistrate must, therefore, record a brief statement of his reason for believing that the statement was voluntarily made. (Mohamad Noor and Varma, JJ.) Emperor v. Ramsidh Rai.

AIR 1938 Pat 352 : 4 BR 724 : 11 RP 79 : 176 IC 530 : 39 Cr LJ 725.

——Madras Criminal Rules of Practice, R. 85— Object of — Question put to accused and his statements showing voluntariness of confession —Confession, if can be rejected merely because formal questions were not asked.

The object of putting the questions set out in R. 85 of the Criminal Rules of Practice is to enable the Magistrate to be quite sure that the statement was a voluntary one; and if one can be sure from the other questions and statements made by the accused that the confession was voluntary and was not brought about by coercion and inducement, then the confession cannot be rejected merely because a formal question was not asked. (Mockett and Horwill, JJ.) Kamsala Muneyya v. Emperor.

AIR 1937 Mad 755 : 46 MLW 144 : 1937 MWN 537 : 10 RM 643 : ILR (1938) Mad 348 : 173 IC 1001 : 39 Cr LJ 390.

——The procedure of recording a confession by putting a series of questions and getting answers to them is ordinarily to be deprecated. The confessing person should be left to narrate his story as a whole without any unnecessary interference and allowed to give all the details that he remembers and wishes to describe. (Coldstream and Jailal JJ.) Gehna v. Emperor.

AIR 1932 Lah 180 : 33 PLR 16 : Ind Rul (1932) Lah 294 : 137 IC 95 : 33 Cr LJ 414.

—— Manual of Government Order (Criminal), paras. 852, 853, 853-A—Confession — Mode of recording — Duty of Magistrate and Sessions Judge to see that confession is voluntary—Question to be put.

In recording a confession, it is the business of the Magistrate to direct every effort to satisfy

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himself that the confession is really voluntarily and truly made and as to why it is made. It is similarly the duty of the Sessions Judge or any other Magistrate before whom the confession may be produced to examine it from this point of view and not to accept it as a matter of course.

If nothing but the usual formal questions are put to the accused, he may be easily instructed by the Police what answers he should give. A Magistrate should, therefore, use his intelligence in the matter and direct his attention to questions about the matter without having such questions actually suggested to him.

Magistrate and Sessions Judges should pay attention to and observe the provisions of paras. 852, 853, 853-A of the Manual of Government orders when recording confessions.

It is not the duty of a Judge to find any and every reason possible and accept any and every argument to whittle away the significance and the defects of the prosecution. He should not just record the evidence for the prosecution without any attempt to fill up the gaps in important places by getting explanation from the witnesses which the Government Pleader failed to get and the witnesses failed to give. (Boys and Sen, JJ.) Patey Singh v. Emperor.

AIR 1931 All 609 : 1931 ALJ 1000 : Ind Rul (1931) All 705 : 133 IC 593 : 32 Cr LJ 1052.

——Elucidation and not cross-examination.

It would be going much too far to say that a magistrate recording a statement or a confession under S. 164 cannot and should not ask a single question of the deponent. But it is equally certain that his position when recording such statement or confession, is merely that of a recording magistrate, and that he is in no sense enquiring into the case, and that he is in no sense an investigating officer. Such statements and confessions made to a police-officer are not regarded as being made in circumstances which justify a Court under ordinary circumstances, in relying upon the record of them, and they cannot be ordinarily put in evidence. But it is desirable that if a witness is really willing to make a statement, or a guilty person is really willing to make a confession, a record of that should be made in such circumstances as may make it reasonably safe to rely upon it. A magistrate would be justified in, and ought, in the ordinary performance of his duties, to clear up any matter which is ambiguous on the face of the statement, but he is wholly unjustified in extracting by questions from the deponent, facts which the deponent has not spoken to in his Court and facts of which the magistrate himself would only be aware of because he has been supplied with some copy of a statement which somebody else alleges the deponent has made and is willing to make again before the magistrate, or unless he is prompted by somebody who is aware of such facts.

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Everything must depend on the nature of the questioning and the object of it, and the mere fact that an answer was elicited by a question does not make the proceedings improper, or the statement inadmissible as a confession. Under S. 164 the magistrate is bound to record every question that he asked. It is of great importance that this provision of the law should be obeyed, otherwise it may be impossible to tell how far a witness voluntarily deposes to a matter, and how far it was extracted from him by questioning even in the nature of cross-examination. (Boys and Banerji, JJ.) Hasan Ali v. King-Emperor.

AIR 1926 All 22 : 23 ALJ 719 : 6 LRA Cr 137 : 88 IC 729 : 26 Cr LJ 1209.

——S. 164 (3)— Magistrate must satisfy himself that confession is voluntary.

Where accused person was actually produced before the Magistrate as soon as he was arrested and was produced before him the next day for recording the confession. Held that the confession should not be ignored on the ground that the Magistrate did not ask him how long he was in Police custody. It is highly irregular for the Magistrate to peruse the alleged statements of the accused made to and recorded by the Police Officer before proceeding to question the prisoner. A Magistrate should generally "question the accused closely as to his motives in making a confession." It is desirable that a Magistrate in recording the confession should put various questions to an accused to enable him to decide whether the confession is a voluntary one or not, but, there is nothing in law which lays down that a Magistrate cannot satisfy himself as to the voluntariness of the confession by putting a single question to the accused person. (Das and Adami, JJ.) Emperor v. Dewan Kahar.

AIR 1923 Pat 13 : 4 Pat LT 186 : 72 IC 961 : 24 Cr LJ 497.

——Recording confession— Questions.

A Magistrate while recording a confession under S. 164, Cr. P. Code can ask questions to satisfy himself that the statement of the accused is voluntary or for the purpose of making clear any particular passage of a statement made to him. But he is not permitted to question the accused closely and at great length for the purpose of extracting statements to be afterwards used as evidence. (Lindsay, J. C., and Kanhaiya Lal, A. J. C.) Kesheo Singh v. Emperor.

AIR 1917 Oudh 362 : 40 IC 742 : 20 OC 136 : 18 Cr LJ 742.

——Confession—Voluntariness.

Under S. 164, a Magistrate ought, by putting questions occurring to him, to make himself conscientiously satisfied that the man is a free agent, and the confession voluntary, and not

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procured by threats and inducements. (Kanhaiya Lal and Kendall, A. J. Cs.) Kendhai v. Emperor.

AIR 1914 Oudh 194 : 1 OLJ 407 : 25 IC 833 : 15 Cr LJ 633.

——Confession—Voluntary nature of.

Where a Magistrate did not question the accused as to the voluntariness of a confession before recording the confession but instead of that, asked him after the confession was recorded, the defect is merely formal, and does not alter the character of the confession. (Imam and Chapman, JJ.) Pulin Tanti v. Emperor.

AIR 1914 Cal 600 : 40 Cal 873 : 22 IC 169 : 15 Cr LJ 25.

——Statement elicited by questioning— Relevancy of statement.

The mere fact that the statement had been elicited by questioning the accused cannot make it irrelevant under S. 164 Criminal P. C. or S. 29, Evidence Act. But that fact may be material in deciding about the voluntary nature of the statement. (Lawrence-Jenkins, C. J. and Carnduff, J.) Barindra Kumar Ghose v. Emperor.

14 CWN 1114 : 7 Ind Cas 359 : 37 Cal 467 : 11 Cr LJ 453.

——While an accused is making a confession a third party should not be allowed to intervene by putting or suggesting questions to be put to accused. (Jenkins C. J. and Mookerjee. J.) Jagjiban Ghose v. Emperor.

9 CLJ 663 : 13 CWN 861 : 2 Ind Cas 681 : 10 Cr LJ 125.

——Confession made under threat and inducement — Stereotyped questions by Magistrate.

If there has been no such lapse of time nor opportunity for calm reflection, as would enable a judge to think that the accused had the chance to realize his position and to speak out voluntarily, it cannot be supposed that the impression of threat and inducement had been fully removed at the time of his confession. Mere usual stereotyped question whether the accused has been induced or threatened, will not show that the impression was removed. Such a confession is inadmissible, not being voluntary. (H. D. Rendall, J.) In re Maretha Balu Dolatram.

17 KLR 346 : 7 Cr LJ 166.

——Ss. 164 and 364— Recording of confession — Duty of Magistrate.

When a prisoner is brought before a Magistrate to make a confession, the Magistrate must question him with a view to discovering whether he confesses voluntarily and this questioning must be in pursuance of real endeavour to find out the object of it. It is the duty of the magistrate to make a substantial inquiry for himself as to the voluntary nature of confession and unless such inquiry is made a confession even before him is inadmissible in evidence. (Adamson, C.

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J. and Fox, J.) Ananda Chandra Sen v. Parbati Nath Sen.

3 LBR 173 : 4 Cr LJ 198.

19. Questioning—

(c) Nature and limits of.

——"Upon questioning the person".

It is not necessary that the Magistrate recording confession should ask the accused as to why he is going to make the confession, and all that is necessary for him to do is to satisfy himself by questioning him that he is making the confession voluntarily. What shape or form the questions are to take, and how closely are the questions to be put to the accused, are matters which must be left to the discretion of the Magistrate according to the facts and circumstances of each case. (Chowdhry, J. C.) Sant Ram v. State.

AIR 1953 Him Pra 105 : 1953 Cr LJ 1665.

——Non-compliance with requirements laid down in I. L. R. 1 Cuttack p. 207 at p. 218—Effect.

Per Full Bench.—The requirements of I.L.R. 1 Cuttack, p. 207 at p. 218 are not intended to be mandatory statutory requirements the non-observance of which would by itself without more, vitiate the admissibility of a confession. The said requirements are wholesome and valuable principles to be observed by a Magistrate recording a confession under S. 164, Criminal P. C., and a trial Court which is called upon to decide whether the confession has been voluntarily made in order that it may be admissible, may consider the omission to put any of the questions indicated in that decision as relevant either on the admissibility of the confession or the weight to be attached to it. Moreover, the model questions suggested in that decision are only illustrative and by no means exhaustive and it is always open to a Magistrate to put such further questions as the circumstances of each case may require so as to satisfy himself about the voluntariness of the confession. (Ray C. J., Jagannadhadas and Narasimham, JJ.) Bala Majhi v. State of Orissa.

AIR 1951 Orissa 168 : ILR (1951) Cut 65 : 1952 Cr LJ 1743 (FB).

——"Upon questioning the person".

Where besides giving the formal warning contemplated by Sec. 164 (3), Cr. P. C., the Magistrate did put a few more questions in order to satisfy himself that the confession was being made voluntarily, the confession could not be ruled out as inadmissible on the ground that there was a breach of S. 164 (3). ILR 1950 Pat 163, Ref. (K. N. Wanchoo C. J. and J. S. Ranawat, J.) Ramsingh v. The State.

1952 RLW 269 : ILR (1952) 2 Raj 93.

——Questioning accused as to motive of confession.

Per Panigrahi J.—It is not correct to rule out a confession recorded under S. 164 as inadmis-

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sible on the ground that the accused was not asked the motive of his confession. The Code does not require any such question to be put. (Jagannadhadas and Panigrahi, JJ.) Ratna Munda v. State.

AIR 1951 Orissa 245 : 16 Cut LT 227 : 52 Cr LJ 685.

——Motive of confession not asked by Magistrate —Effect.

There is nothing in S. 164 (3) as to the nature of the questions that are to be put to the accused by the Magistrate. It is, therefore, not necessary that the Magistrate should ask the accused as to why he is going to make the confession. All that is necessary for the Magistrate to do is to have satisfied himself by questioning him that he is making the confession voluntarily. (Chowdhry, J. C.) Ranjha v. The State.

1951 Him Pra 75 : 1952 Cr LJ 15.

——Voluntary confession — Magistrate eliciting necessary facts by putting leading questions to accused — Procedure held highly objectionable and confession must be rejected as not voluntary.

A Magistrate who recorded a confession instead of allowing the accused to make a statement in his own words put three leading questions to the accused. The questions indicated that the Magistrate was told what the accused was to state and he elicited the necessary facts by putting him three leading questions:

Held, that the procedure adopted by the Magistrate was highly objectionable and the confession so recorded must be rejected as not voluntary. (Hemeon and Sen, JJ.) Mt. Bhukin v. Emperor.

AIR 1948 Nag 344 : ILR (1948) Nag 147 : 1948 NLJ 489 : 49 Cr LJ 561.

——Power of Magistrate to put questions—Scope of.

A Magistrate recording a voluntary confession may justifiably put questions to clear up points of doubt in the narrative, but he is not justified in making enquiries regarding other crimes than those to which a voluntary confession is made, much less in procuring from the person confessing proof regarding the commission of such crimes. (Din Mohammad and Cornelius, JJ.) Emperor v. R. B. Lovett.

231 IC 408 : 48 Cr LJ 794 (Lah).

——Complaint about ill-treatment by police — Magistrate must put further questions to ascertain whether confession is voluntary.

Where a complaint has been made against the Police for ill-treatment, the Magistrate recording the confession is bound to find out by putting further questions whether the confession made was voluntary, or whether the fear inspired by the police which actuated the accused to make the confession in the beginning had not worn off and was still operative upon the mind of the accused. The answers to the preliminary questions put by the Magistrate may themselves have

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been actuated by this fear. It is for the prosecution to establish the admissibility of a confession. Where everything is in proper form and there is nothing to arouse suspicion that improper police methods have been used or that the confession was originally inspired by such motives as would render it inadmissible, the confession may be admitted to the file without more searching inquiry, but where the accused after answering the questions of the Magistrate satisfactorily at the beginning bursts out at the end with a complaint of police ill-treatment which forced him to give the police information, a more searching inquiry is needed before the confession can be admitted. (Madeley and Walford, JJ.) Barhma v. Emperor.

AIR 1947 Oudh 95 : 1946 AWRCC 248 : 1946 OWN 358 : 1946 OACC 248 : 228 IC 21 : 48 Cr LJ 27.

——Magistrate satisfied from answer to his question that confession was voluntary — Further questions, necessity of.

When there is a statement of the accused in answer to the question put by the Magistrate that the statement was being made voluntarily by the accused, it is not necessary to put any further question to the accused before recording his confession. (Varma and Rowland, JJ.) Jhiktu Bhogta v. King-Emperor.

AIR 1942 Pat 427 : 14 RP 585 : 23 PLT 763 : 8 BR 542 : 199 IC 307 : 43 Cr LJ 544.

——Confession—Recording of.

One of the questions which the Magistrate recording the confession should ask is : "Why are you making this confession, knowing that it may be used against you?" (Manohar Lall and Meredith, JJ.) Dikson Mali v. Emperor.

AIR 1942 Pat 90 : 23 PLT 387 : 8 BR 49 : 14 RP 232 : 196 IC 597 : 43 Cr LJ 36.

——Question by Magistrate held defective and answer by accused, held no admission.

Question put to the accused by the Magistrate recording the confession was to the following effect : "Did you throw the born child into the well as the result of which he died of drowning?" To this the answer given was "Yes" :

Held, that question was put in an unfortunate form as it was a question composite in nature to which it was almost impossible to give a direct answer 'yes' or 'no' and it could not therefore be inferred from it that the accused did actually admit that the child was born alive. (Almond, J. C. and Soofi, J.) Hassan Pari v. Emperor.

AIR 1941 Pesh 22 : 13 R Pesh 51 : 193 IC 284 : 42 Cr LJ 381.

——Ss. 164, 364— Prisoner should be allowed to make any statement.

In recording a confession under S. 164, Criminal P. C., after compliance with the necessary preliminaries, the Magistrate should, where there is no evidence recorded against the confessing pri-

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soner, allow him to make whatever statement he likes and not ask him a direct question whether he has committed a particular offence, and S. 364 of the Code has no application where no evidence has yet been produced against the accused. (Nanavutty, J.) Sheo Prasad v. Emperor.

AIR 1935 Oudh 416 : 7 RO 667 : 1935 OWN 722 : 156 IC 231 : 36 Cr LJ 927.

——The Judge, with whom the responsibility lies for acting upon the confession, should satisfy himself by putting searching questions to such witnesses as had anything to do with the confession. The first question that ought to strike every Judge is : Why the accused made the confession?" It is very important to ascertain, from those in whose custody the accused was, the circumstances in which the question of confession first arose, how the accused expressed his willingness to be placed before the Magistrate and his readiness to make a confession. Similar questions arise as regards retraction. (Pullan and Niamatullah, JJ.) Nazir v. Emperor.

AIR 1933 All 31 : 1932 ALJ 1125 : Ind Rul (1933) All 170 : 55 A 91 : 143 IC 67 : 34 Cr LJ 489.

——Limits of questioning.

In recording confessions under S. 164, the Magistrate should merely record such confessions or statement as the accused might desire to make. It is no part of his duty to ask questions in detail on matters already within the Magistrate's knowledge and endeavour to reconcile the statements of the accused with other co-accused. But if the statement contains any real ambiguity it is the duty of the Magistrate with great caution and exercising great discretion to question the accused in order to eliminate the ambiguity and give him a chance to make his statement intelligible. (Boys and Young, JJ.) Abdul Jalil Khan v. Emperor.

AIR 1930 All 746 : 1930 ALJ 1105 : 1930 Cr C 1002 : 128 IC 593 : 14 AI Cr R 497 : 12 LRA Cr 1 : 32 Cr LJ 152.

——Madras rules—Form of questions.

Where the Magistrate, before recording a confession asked the accused : "Do you understand that you are at liberty to make a confession or not as you like and are you aware that there is no necessity or compulsion on you to make any such statement or confession which may be used in evidence against you :"

Held that the question satisfied the spirit of R. 196 (2). The specimens of questions suggested in the Criminal Rules of Practice seem to be leading questions suggesting torture or other ill-treatment by the police, and it seems to be undesirable to put such questions in the form mentioned in the rule. The whole object and policy of R. 196 is that a Magistrate should satisfy himself that there is no compulsion by the police or ill-treatment so as to raise the suspicion that the

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statement of the accused is not a voluntary statement, and so long as the spirit of the rule is satisfied it is undesirable that questions should be put in this form showing a total want of trust in the police. (Ramesam and Jackson, JJ.) Kuppathan v. Emperor.

AIR 1927 Mad 974 : 105 IC 667 : 1927 MWN 824 : 9 AI Cr R 148 : 53 MLJ 739 : 28 Cr LJ 955.

——S. 164 (3) —Duty of Magistrate.

It would be a very dangerous rule to lay down that any particular form of questioning is necessary. Whilst it is clearly desirable that a Magistrate should always put such questions as may be necessary to enable him to determine whether the confession is voluntary, there is no reason why a comprehensive question such as asking him that he might make a statement if he so wished, should not be sufficient. 4 PLT 187, Foll. 40 IC 721 Not Foll. 2 IC 681 : 45 IC 613 : 25 Bom 543 Ref.

If in a murder case the accused have confessed, the Court has to see whether it can rely on the confessions and this involves a consideration of whether the evidence in the case affords corroboration of the matters alleged by themselves before the Magistrate in their confessions. (Dawson-Miller C. J. and Mullick, J.) Thibu Bhogta v. Emperor.

AIR 1923 Pat 356 : 4 Pat LT 279 : 73 IC 569 : 24 Cr LJ 649.

——Ss. 164 and 533—Confession—Record by Magistrate having no jurisdiction in the case.

A Magistrate recording a confession need not be one having jurisdiction in the case. No form of questions is prescribed by S. 164 (3) of the Cr. P. Code from which a Magistrate recording a confession must satisfy himself that he believes the confession was made voluntarily. Under S. 533 of the Cr. P. Code a defect in compliance with the provisions of S. 164 can be cured by evidence taken by the Court before which the confession is tendered. (Dawson-Miller, C. J., Chapman and Atkinson, JJ.) Ghinua Uraon v. Emperor.

AIR 1918 Pat 179 : 3 PLJ 291 : (1918) Pat HCC 57 : 4 Pat LW 14 : 43 IC 423 : 19 Cr LJ 135 (FB).

19. Questioning—

(d) Record of questions & answers.

——Ss. 164 and 364 and 533 — Confession — Mode of recording.

Where an accused person makes in the form of a narrative the whole of his confession, without any question being put to him to elicit facts, it is not possible for the Magistrate to record the confession in the form of questions and answers. Though the Magistrate would be well advised to record the questions that he had put to accused to satisfy that he was making a voluntary confession and the answers given, the mere fact that

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he did not, though it may detract from the value of the confession, does not make it inadmissible. Such a defect is curable under S. 533. (Malik, C. J. and Bind Basni Prasad, J.) Rex v. Moti.

AIR 1953 All 792 : 1953 All LJ 507 : ILR (1953) 2 All 307 : 1953 Cr LJ 1829.

—— Ss. 164 and 533 — Confession — Mode of recording — Failure to record questions and answers — Effect.

Per Full Bench.—The Magistrate recording a confession is bound to record every question put by him to the accused and every answer given by the accused to the same in order to satisfy himself that the confession to be made is voluntary. If the questions have been put and answered but no record of it has been made, evidence can be given both of the factum of the questions and answers and of the contents of the same under S. 533, Cr. P. C. If the substance of the actual questions and answers can be supplied by such evidence, that cures the defect completely. (Ray C. J.; Jagannadhadas and Narsimham, JJ.) Bala Majhi v. State of Orissa.

AIR 1951 Orissa 168 : ILR (1951) Cut 65 : 1952 Cr LJ 1743 (FB).

——Ss. 164 (2), 364 (1) and 533—Provisions regarding record of confessions — Provisions, if mandatory.

The law requires that every question put to the accused and every answer given by him should be recorded in full. It is not sufficient that the Magistrate who recorded the confession should be satisfied with regard to certain matters. It is considered essential that the material on record should show to the Judge holding the trial or to the Court of appeal that the questions put to the accused on the subject were understood by him and were of a nature which could satisfy a reasonable person that the requirements of the law in this behalf were complied with. The provisions relating to the manner in which confession should have been recorded contained in the Code are imperative. The failure to observe them strictly vitiates the record of the confession. (Kaul C. J. and Abdul Hakim Khan, J.) Bhawarlal v. State.

AIR 1951 Madh B 36.

——Ss. 164 (3) and 533—Failure to record all questions put to accused — Effect.

A mere failure to record all the questions the Magistrate put to the accused does not necessarily entail the rejection of the confession as inadmissible. (Jagannadhadas and Panigrahi, JJ.) Suka Misra v. The State.

AIR 1951 Orissa 71.

——Ss. 164, 533 — Actual questions and answers not recorded — Magistrate giving evidence under S. 533 — Court satisfied that usual precautions were taken.

It is not possible to lay down the particular questions in each particular case which ought to be

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put, but the Magistrate and the High Court have to be satisfied that the confession was in fact voluntary.

Where confessions are recorded under S. 164, Criminal P. C., and although the actual questions and answers put by the Magistrate to the confessing accused are not recorded, the Magistrate gives evidence as is permitted under S. 533, Cr. P. C., and he satifies the Court that questions had been asked and that the usual precautions had been taken by him, the confessions are admissible under Ss. 164 and 533 taken together. (Young C. J. and Monroe, J.) Mohammad Din Mehar Din v. Emperor.

AIR 1938 Lah 200 : ILR (1937) Lah 658 : 40 PLR 401 : 10 RL 618 : 174 IC 881 : 39 Cr LJ 488.

—Ss. 164, 537—Magistrate not putting questions to elicit voluntary nature of confession—Prejudice caused to accused—Defect, if curable—Evidence Act (I of 1872), Ss. 21, 29—Whether can be admitted under Ss. 21, 29.

The effect of the provisions of the Criminal P. C., on the subject of confessions is to prescribe the mode in which confessions are to be dealt with by Magistrates, and to render inadmissible any attempt to deal with them in any other way.

A confession was not recorded on the prescribed form. It started straightway and was entirely in the form of a narrative. There was nothing on the record to show that the Magistrate put any questions to elicit the voluntary nature of the confession. It appeared that he merely told the accused that he need not confess and that if he did so, it could be used against him. It was doubtful as to whether the accused was really questioned as prescribed by S. 164, before the statement was taken down:

Held, that the nature of the questions must be such as to show that the Magistrate made a real endeavour to find out whether the confession was really voluntary and that the confession was vitiated. If questions had, in fact, been put, the failure to record them would be curable under S. 537, Criminal P. C., provided that the error had not injured the accused as to his defence on the merits, but in this case, as the questions were not put at all, S. 537 did not apply.

Held, also, that the confession was not admissible under S. 21 or S. 29, Evidence Act, inasmuch as the real objection to admitting the confession under the general sections would be that the strict procedure laid down by S. 164 could be thereby rendered nugatory. (Grille and Gruer, JJ.) Sardar Miya v. Emperor.

AIR 1937 Nag 257 : ILR (1937) Nag 416 : 20 NLJ 128 : 10 RN 83 : 170 IC 868 : 38 Cr LJ 987.

——In recording a confession, it is the duty of Magistrate to satisfy himself in every reasonable way that the confession is made voluntarily and it is further the imperative duty of Magistrate to

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record those questions and answers by means of which he has satisfied himself that the confession is in fact voluntary so as to furnish data to the Court of Session and High Court to arrive at the same conclusion as regards the voluntary nature of confession. (Grimwood-Mears, C. J. and Sen, J.) Shambhu v. Emperor.

AIR 1932 All 228 : Ind Rul (1932) All 102 : 1932 ALJ 162 : 54 A 350 : 135 IC 838 : 33 Cr LJ 201.

——S. 164 (3) — Record of confession.

The word "record" must necessarily mean "making a part of a judicial record" and not merely writing out". Even if the questions relating to the voluntary character of a confession appeared at the end instead of at the beginning of the record it would not make the record improper. (Batty and Heaton, JJ.) Emperor v. Kadar Ghulam Mahmed.

8 Bom LR 950 : 5 Cr LJ 4.

20. Remand to police custody after confession.

——Voluntary nature of confession — Evidence Act (1872), S. 24.

Where not only was the accused produced from police custody, but she was restored to that custody after her examination, and there was unaccountable delay in the police producing her before the Magistrate for the purpose, the voluntary character of her confession under Section 164, cannot but be doubted. It makes no difference whether the confessing accused had been kept in police custody in defiance of rules of custody or of ordinary and natural course of prudent conduct. The mere fact that the Magistrate kept the accused sitting for about half an hour in a corner of his room before recording her confession does not in the circumstance make any difference, especially when he does not do anything to reassure her that she need not make any statement under police pressure. (Choudhary, J. C.) Vidyamati v. The State.

AIR 1951 Him Pra 82 : 1952 Cr LJ 33.

——Accused sent to judicial lock up after recording of confession — Mere fact that there is a police constable outside the lock-up cannot turn it into police custody so as to render the confession valueless or involuntary: 1941 MLR 18 (23) (Cr) Rel. on. (Verma, C. J. and Nawal Kishore J.) Balia v. Sarkar.

AIR 1950 Raj 16 : 51 Cr LJ 1077.

——Accused must be sent to judicial lock-up after confession and should not be returned to Police custody — Accused, if handed back to Police, Court must look very carefully at confession and surrounding circumstances to satisfy itself about voluntariness of confessions.

The confessing accused must invariably be sent to the judicial lock-up as soon as possible after confession and on no account, be returned to Police custody. If the Police, thereafter wish the accused for any particular purpose, the instructions lay down clearly that the Police must put in an application stating the purpose for which the accused are required, and for that purpose, they may be handed over to the Police. There certainly ought to be an interval between the taking of the confession and the handing over of the accused to the Police for any subsequent purpose. Where the accused is handed back to the Police, the Court must look very carefully at the confessions and the surrounding circumstances in order to satisfy itself that the confessions were in fact voluntary. (Young C. J. and Monroe, J.) Surat Singh Buta Singh v. Emperor.

AIR 1938 Lah 292 : 40 PLR 214 : 10 RL 600 : ILR (1937) Lah 740 : 174 IC 804 : 39 Cr LJ 475.

——Confession recorded at 9 p. m. but accused not then remanded to judicial lock-up.

Where an accused was produced at 9 p. m. before the Magistrate for recording confession and was not remanded to the judicial lock-up after the confession had been recorded:

Held, that the confession was not of much use in deciding the case. (Almond J. C. and Mir Ahmad, J.) Kishan Chand Kewal Ram v. Emperor.

AIR 1938 Pesh 5 : 10 R Pesh 64 : 174 IC 449 : 39 Cr LJ 448.

——Confessing accused should not be sent back to Police custody.

If confessing persons know that there is a likelihood of their being returned to Police custody after making confessions, they would be more inclined to make false confessions at the instance of the Police than they otherwise would do. This practice ought to be abolished. (Young C. J. and Monroe, J.) Narinjan Singh v. Emperor.

AIR 1936 Lah 357 : 17 Lah 419 : 8 RL 890 : 38 PLR 820 : 162 IC 379 : 37 Cr LJ 567.

——Confession recorded under S. 164, Criminal P. C. — Confessor returned to Police custody —Procedure is highly improper.

The procedure of returning to Police custody a person whose confession has been validly recorded under S. 164, Criminal, P. C., is wholly improper and may damage the whole case in which such a confession is used. (Young C. J. and Monroe, J.) Abdur Sattar v. Emperor.

AIR 1936 Lah 278 : 38 PLR 1 : 8 RL 802 : 17 Lah 460 : 161 IC 793 : 37 Cr LJ 493.

——Making over record to Police Officers, propriety of.

It is not proper for a Magistrate to hand over the accused to the investigating officer and record his confession after he had been with the Police Officer for some time. Such procedure reduces to a considerable extent the value of the confession.

A Magistrate, after recording confessions should not make them over to the Police Officers and where confessions are taken one after the other and on different dates, such a procedure is obviously

CRIMINAL P. C. (V of 1898), S. 164 — 20. Remand to police custody after confession objectionable. (Agha Haider, J.) Inder Datt v. Emperor.

AIR 1931 Lah 408 : Ind Rul (1931) Lah 537 : 132 IC 185 : 32 Cr LJ 818.

——Voluntary character — Essential.

Section 164 makes it imperative for a Magistrate before recording a confession made to him in the course of a Police investigation to question the person making it as to whether he is making it voluntarily and where this is not done a confession is not admissible in evidence. When considering a confession recorded during the course of a Police investigation and which is subsequently retracted the Court must reach a definite conclusion that it is voluntarily made, before it is admitted in evidence. If the Court has any doubt on the point it should give the benefit of the doubt to the accused person.

Where while in Police custody, the accused made a confession on being questioned by the Court Inspector who immediately produced him before a Magistrate who proceeded to record the confession in the presence of the Court Inspector and after recording it remanded the accused to Police custody.

Held, that it would be most unsafe to hold that the confession was made voluntarily and that, therefore, it was not admissible against the accused. AIR 1922 Lah 237. Foll. (Scott-Smith and Zafar Ali, JJ.) Neki v. Emperor.

AIR 1924 Lah 624 : 76 IC 180 : 25 Cr LJ 116.

21. Retracted confession.

(a) Admissibility.
(b) Conviction and corroboration.
(c) Duty of Court.
(d) Evidential value.
(e) What amounts to.

21. Retracted confession — (a) Admissibility.

——Retracted confession — Admissibility and use of, against co-accused.

A retracted confession, so far as its admissibility against the co-accused is concerned, does not differ from one that is not retracted. But the evidentiary value of a retracted confession against a co-accused is considerably less than against the maker; it is generally not considered sufficient to justify the conviction of a co-accused unless it stands unrebutted and is sufficiently corroborated by material evidence against co-accused. (Mohd. Jan and Mohd. Soofi, JJ.) Muhammad Naeem v. Crown.

Pak Cas 1950 Lah 657.

——Where the Magistrate had deliberately isolated the provisions of S. 164 (3) of Cr. P. C. in recording the retracted confession, the retracted confession could not be admitted in evidence and the trial would be vitiated if the Judge placed it before the jury. (Nanavutty, J.) Raghunandan Prasad v. Emperor.

1937 OWN 296.

CRIMINAL P. C. (V of 1898), S. 164—21. Retracted confession—(a) Admissibility

——Confession after challan was returned to police.

The Police produced an accused under S. 302, I. P. C. before a Magistrate on 1st September with a view to his committal to Sessions. The Magistrate adjourned the case to 2nd September in order to give opportunity to the accused to engage a counsel. On 2nd September, however, the case was not taken by the Magistrate and the police took back the challan alleging that it was incomplete but on the same day a statement under S. 164 was recorded by the Magistrate, in which the accused made full confession of his guilt. Later on, at the close of the prosecution case, the accused retracted his confession alleging that the same had been made under promise of pardon.

Held, that the confession could not be used against the prisoner. There was no law which authorized the Magistrate to return the challan after he had taken cognizance of the case. The course adopted by the police in taking back the challan was illegal as well as unfair to the accused and the confession could be ruled out for that reason alone. (Jai Lal and Bhide, JJ.) Pahlawan v. Emperor.

AIR 1930 Lah 454 : 123 IC 540 : 1930 Cr C 558 : 31 Cr LJ 533.

——Retracted confession.

A retracted voluntary confession is admissible in evidence not only against the accused but also against his whole case. (Sharfuddin and Atkinson, JJ.) Guza Majhi v. Emperor.

AIR 1917 Pat 247 : 2 Pat LJ 80 : 38 IC 1005 : 18 Cr LJ 445.

——Confession — Admissibility in evidence — Retracted confession.

See Evidence Act S. 24.

10 Cr LJ 200 (Sind).

——Confession recorded by Magistrate of native state — Admissibility in trials in British India —Subsequent retraction before committing Magistrate and in session — Effect.

See Evidence Act (1872), S. 26.

6 Cr LJ 377 (Lah).

——Retracted confession — Admissibility — Duty of judge.

See Evidence Act (1872) S. 24.

4 Cr LJ 332 (Bom).

21. Retracted confession.—

(b) Conviction and corroboration.

——Corroboration.

See Evidence Act (1872), S. 24.

AIR 1953 SC 459 : 1953 Cr LJ 925 (SC).

——Corroboration, necessity of, to base a conviction thereon.

See Evidence Act (1872), S. 24.

AIR 1953 Raj 214 : 1953 Cr LJ 1853.

——Evidence Act (1872), S. 24.

Even in the case of a nominal retraction, the rule of caution which requires a retracted con-

CRIMINAL P. C (V of 1898), S. 164—21. Retracted confession—(b) Conviction and corroboration

fession to be corroborated in all its material particulars before forming the basis of conviction must be followed. (Chowdhry, J. C.) Sant Ram v. State.

AIR 1953 Him Pra 105 : 1953 Cr LJ 1665.

——Conviction on — Legality.

See Evidence Act (1872), S. 24.

AIR 1953 SC 411 : 1953 Cr LJ 1633 (SC).

——Retracted confession — Conviction on retracted and uncorroborated confession.

Per Mack J.—There is no authority to the effect that conviction on an uncorroborated but retracted confession before a Magistrate is illegal. Each case has to be dealt with on its own facts. Where a man, whose wife has been strangled to death at night in a house occupied solely by them has voluntarily confessed before a Magistrate to his guilt, he should not be acquitted.

Per Somasundaram J.—The question whether a retracted confession can be acted upon without material corroboration will arise only when the confession is true and can safely be acted upon. Where, though the confession is a voluntary one, it contains allegations which contradict the main aspect of the prosecution case, it is unsafe to act upon it without further corroboration. (Mack and Somasundaram, JJ.) Ravipati Sitaramayya, In re.

AIR 1953 Mad 61 : 1952 Mad WN 365 : 1952 Mad WN Cr 77 : 1952-1 MLJ 690 : 65 MLW 775 : ILR (1953) Mad 169 : 1953 Cr LJ 245.

——Evidentiary value.

It is not illegal to base conviction on a retracted confession but the rules of prudence require that a retracted confession must be corroborated by independent evidence connecting the accused with the crime. (Wazir C. J. and Kilam, J.) Samad Malik v. State.

AIR 1953 J and K 1 : 11 J and KLR 111 : 1953 Cr LJ 242.

——Corroboration.

It is no doubt correct that if the Court is satisfied that the retracted confession was made voluntarily and without any kind of pressure or inducement it can be used against the maker and conviction can be recorded merely on its strength. But, for that the Court has to be satisfied that the statement was not only voluntarily made but was also a true disclosure of the facts as they happened. To acquire that satisfaction the Courts generally look for corroborative evidence. As a rule of prudence it is regarded not safe to base a conviction solely on a retracted confession unless there are circumstances which leave no room for doubt that it is voluntary and also true. (Chopra and Passey, JJ.) Sajjan Singh v. State.

AIR 1952 Pepsu 94 : 1952 Cr LJ 952.

——Corroboration.

All that the law required was that a retracted confession should be corroborated in material and

CRIMINAL P. C. (V of 1898), S. 164—21. Retracted confession—(b) Conviction and corroboration

not in all particulars. (Baxi J. C.) State v. Waghela Hiranbai Khojati.

AIR 1951 Kutch 92 : 1952 Cr LJ 10.

——Conviction on.

See Evidence Act (1872), S. 24.

1952 Raj LW 472.

——Value of.

If the Court is satisfied that the retracted confession was made voluntarily and without any kind of pressure or inducement it can be used against the maker and conviction can be recorded merely on its strength. (Teja Singh C. J. and Chopra, J.) Crown v. Karam Singh Sadhu Singh.

AIR 1951 Pepsu 73 : 2 Pepsu LR 1 : 52 Cr LJ 498.

——Corroboration.

See Evidence Act (1872), S. 24.

4 Sau LR 94.

——Retracted confession — Evidence Act (1872), S. 24.

As a matter of law, a confession, though retracted can be the basis of a conviction. The Courts, however, look for corroboration of the statements made in the retracted confession, before acting upon it, as a rule of prudence. (Jagannadhadas and Panigrahi, JJ.) Khalli Behera v. The State.

AIR 1951 Orissa 78 : 16 Cut LT 186.

——Admissibility and value of — Evidence Act (1872), S. 24.

Once the Court holds the confessions to be voluntary, there is nothing in law to prevent it from basing a conviction on retracted confessions provided they are believed to be true. It is no doubt due to a rule of prudence that the Courts have declined to record a conviction on a retracted confession alone and have required some independent evidence in support of it, that is, corroboration on some material particular connecting the accused with the offence : AIR 1930 Lah 257, Ref. (Varma C. J. and Nawal Kishore, J.) Balia v. Sarkar.

AIR 1950 Raj 16 : 51 Cr LJ 1077.

——Corroboration.

It is a rule of prudence that a retracted confession should not be acted upon unless it is corroborated in material particulars which are mentioned in the confession itself and also connect the accused with the offence : AIR 1936 All 373, Ref. (Nawal Kishore and Bapna, JJ.) Mt. Nojali v. Sarkar.

AIR 1950 Raj 5 : 51 Cr LJ 739.

——Conviction on.

A retracted confession can be used against the maker. It may form the basis of conviction if the Court is satisfied about its truth and voluntary nature. But, even in such a case, it is

CRIMINAL P. C. (V of 1898), S. 164—21. Retracted confession—(b) Conviction and corroboration usual to require corroboration. (Mohd. Jan and Mohd. Soofi, JJ.) Muhammad Naeem v. Crown.
Pak Cas 1950 Lah 657.

——Retracted confession — It may form basis of conviction if believed — But it is unsafe to convict on it without independent corroboration — Corroboration must be in material particulars. (Hemeon and Sen, JJ.) Mt. Bhukhin w/o Gajraj v. Emperor.

See Evidence Act (1872), S. 24.

AIR 1948 Nag 344 : ILR (1948) Nag 147 : 1948 Nag LJ 489 : 1948 All WR (Sup) 145 : 49 Cr LJ 561.

——Corroboration — Necessity of — Production of hatchet from place accessible to others as well—Whether sufficient as corroboration.

A Court may convict an accused person on his own uncorroborated confession which has been subsequently retracted, provided, of course, that the Court is satisfied that the confession was made voluntarily and that was true in fact.

Where a hatchet was produced three days after a murder from a place which was accessible to others as well and the accused was not the only person who was alleged to have taken part in the murder, and the confession was retracted :

Held, that taking into consideration all the circumstances of the case, the production of the hatchet by the accused from a place which was accessible to others as well had very little or no corroborative value on the charge of his being one of the murderers and that he was entitled to the benefit of a reasonable doubt. (Rupchand, J. C. and Lobo, A. J. C.) Emperor v. Khairmahomed.

AIR 1933 Sind 313 (2) : 6 RS 57 : 146 IC 180 : 35 Cr LJ 17.

——Value of confession.

That a confession, having been retracted, cannot be acted upon without material corroboration, is not an absolute rule. If the reasons given by an accused person for having made a confession, which he subsequently withdraws, are, on the face of them, false, it is not apparent why that confession should not be acted on, as it stands and without any further corroboration. (Waller and Cornish, JJ.) Kesava Pillai v. Emperor.

AIR 1929 Mad 837 : 1929 Cr C 485 : 30 MLW 642 : 2 M Cr C 298 : 1929 MWN 901 : 57 MLJ 681 : 53 Mad 160 : 125 IC 77 : 31 Cr LJ 768.

——When sufficient for conviction.

A confession made and retracted must always be open to some suspicion. But it is sufficient for a conviction, if the Court is satisfied that it was voluntarily made and true. The credibility of such a confession in each case is a matter for the Court to decide, according to circumstances of each particular case. 8 WR 40 Cr.; 22 Cal 164, Followed. (Das and Adami, JJ.)Behari Adraki v. Emperor.

AIR 1922 Pat 492 : 60 IC 789 : 3 PLT 98 : 22 Cr LJ 293.

21. Retracted confession—
(c) Duty of court.

——Retracted confession — Evidence Act (1872), S. 27.

When a confession is retracted and reasons are given for retracting it, it is the duty of the Court to examine these reasons and satisfy itself that the confession was voluntary. (Baxi, J. C.) State v. Waghela Hiranbai Khojati.

AIR 1951 Kutch 92 : 1952 Cr LJ 10.

——Failure to emphasize in charge.

From the mere fact that a confession recorded under S. 164 is retracted in the committing Magistrate's Court, the truth of confession cannot be doubted for the accused always do retract their confession in the committing Magistrate's Court if they are represented by counsel ; and hence the failure of the Judge to emphasize this point to the jury is not misdirection. (Horwill, J.) In re Virdhichand Sowcar.

AIR 1943 Mad 527 : 1943 MWN 290 (2) : (1943) 1 MLJ 377 : 16 RM 243 : 208 IC 265 : 44 Cr LJ 766.

——S. 164 (3)—No questions put to accused regarding voluntary nature of confession — Such confession subsequently retracted before committing Court— Confession rejected as tutored.

It is the Magistrate's duty to satisfy himself while recording a confession by asking the necessary questions, that the confession is not the result of any undue influence. Where he fails to put the questions and the confession is retracted before the committing Magistrate as having been tutored, the Court cannot rely on such confession. (Rowland and Madan, JJ.) Ram Babu Jadav v. Emperor.

AIR 1938 Pat 60 : 18 PLT 964 : 4 BR 266 : 10 RP 402 : 173 IC 418 : 39 Cr LJ 302.

——Statement of the accused himself that what the approver stated was true is the best corroboration of approver's statement. Confessions are almost invariably retracted by the accused at the trial and if the confession is retracted, it needs a close scrutiny which would be unnecessary if the accused adhered to the story. (Mockett and Horwill, JJ.) Boja Karrevadu v. Emperor.

1937 MWN 562.

21. Retracted confession—
(d) Evidential value.

——Voluntary confession — Confession retracted at late stage—(Evidence Act (1872), S. 24.)

The circumstance that the confession was not retracted in the Court of the Committing Magistrate but was retracted in the Sessions Court at a late stage goes strongly in favour of the con-

fession being held to be voluntary. (Chowdhry, J. C.) Findal v. State.

AIR 1954 Him Pra 11 : 1953 Cr LJ 1900.

——Retracted confession, value of.

See Evidence Act (1872), S. 24.

AIR 1954 J and K 1 : 1953 Cr LJ 1865.

——Confession recorded under S. 164 retracted in Sessions Court — Use of retracted confession against accused if comes within the inhibition of Art. 20 (3) of the Constitution.

See Constitution of India, Art. 20(3):

AIR 1953 SC 131 : 1953 Cr LJ 668 (SC).

——Retracted confessions— (Evidence Act (1872), S. 30).

A retracted confession, which is a common phenomenon, can be acted upon even if it is uncorroborated, if the reasons given by the accused for withdrawing the confession are palpably false. (Ramaswami, J.) In re Battu Musalayya

66 Mad LW 777.

——Retracted confession — Value of — Jury trial— Duty of Judge.

See Evidence Act (1872), S. 30.

AIR 1952 Assam 169 : 1952 Cr LJ 1663.

——Retracted confession — Evidentiary value.

See Evidence Act (1872), S. 24.

3 Pepsu LR 543.

——Retracted confession — Evidentiary value — Direction to jury.

See ibid, S. 297.

AIR 1950 Cal 413 : 51 Cr LJ 1520.

——Retracted confession.

A retracted confession may not be used to corroborate the evidence of the approver against the co-accused but it can be used as corroboration of his evidence against the maker of the confession himself. (Mohd. Jan and Mohd. Soofi, JJ.) Muhammad Neem v. Crown.

Pak Cas 1950 Lah 657.

——Retracted confession — Evidentiary value.

A confession which is retracted and which is untested by cross-examination has necessarily even less weight than the evidence of another accomplice witness, which has been held not to be corroboration of the testimony of an approver: AIR 1944 Lah 472, Rel. on. (Din Mohammad and Cornelius, JJ.) Surjan Singh v. Emperor.

230 IC 431 : 48 Cr LJ 651 (Lah).

——Confession — Retracted confession — Use of, against accused making it and against co-accused —Distinction — Corroboration — Necessity of — Evidence Act, S. 30.

There is a clear difference between the weight that may be given to a retracted confession against the accused person who makes it and the weight to be given to a retracted confession against a co-accused. In the case of a co-accused, S. 30, Evidence Act, comes into operation : when

a confession is to be used against the accused who made it S. 30 does not apply. A retracted confession of a co-accused should not be taken into consideration against another accused unless it is corroborated in the full sense of the word—corroboration as to the factum of the crime and corroboration as to identity. When the retracted confession of one accused is corroborated in the full sense of the word, it can be taken in consideration against, and may be said to corroborate the confession of another accused, but not otherwise. But even then under S. 30, Evidence Act, it is not the basis of a conviction ; it stands on the same footing as the evidence of an accomplice and can be considered against the co-accused, and relied on in corroboration. An accused can in law and prudence undoubtedly be convicted on his own retracted confession. When an accused person is being convicted upon his own confession, S. 30, Evidence Act, does not come into operation and the meaning of the words "may be taken into consideration" used in that section does not affect the case at all. A retracted confession of course has no such force as a confession which is adhered to, to the end, but circumstances may so corroborate a confession, using the word 'corroborate' not in its dual sense but in the sense of fortifying the confession by surrounding circumstances, as to satisfy the Court of the voluntary and true nature of the confession, so that the Court has no proper hesitation in believing it or acting upon its truth.

Where a retracted confession of an accused is to be considered against the accused who makes it, it is not necessarily corroboration in the full sense of the word that is required. Corroboration then may relate to corroborating circumstances, used more in the sense of S. 157, Evidence Act, than in the sense of S. 114, Evidence Act, illust. (b), which says that an accomplice is unworthy of credit, unless he is corroborated in material particulars. The corroboration need not be corroboration in its dual aspect ; it may be corroboration by circumstances which satisfy the Court that when the accused confessed, though the confession be retracted ; the confession is true and voluntary and may be made the basis of the conviction of the accused who makes it. But each case must be considered on its own merits. (Davis C. J. and Thadani, J.) Ismail v. Emperor.

AIR 1946 Sind 43 : ILR (1945) Kar 419 : 224 IC 83 : 47 Cr LJ 548.

——Value against co-accused — Other evidence materially corroborating confession — Conviction of accused on such confession—Legality.

The retracted confession of an accused person, if true, is sufficient for the conviction of the accused even if there is no corroborative evidence. But retracted confession alone of accused is not sufficient to justify the conviction of a co-

CRIMINAL P. C. (V of 1898), S. 164 — 21. Retracted confession — (d) Evidential value

accused but where such confession stands unrebutted and there is nothing to show that the accused had any reasons for naming other persons falsely and his story fits in exactly with the facts known and is corroborated sufficiently by material evidence against co-accused, the evidence is admissible and is a strong piece of evidence against the co-accused. (Raza and Bisheshwar Nath, JJ.) Musaheb Ali v. Emperor.

AIR 1932 Oudh 321 : Ind Rul (1932) Oudh 253 (2) : 9 OWN 327 : 137 IC 665 : 33 Cr LJ 502.

——A retracted confession cannot be given any weight, unless it is well corroborated by reliable evidence. (Adami and Bucknill, JJ.) Ramai Ho v. Emperor.

AIR 1925 Pat 191 : 84 IC 458 : 3 Pat 872 : 26 Cr LJ 314.

——One witness had stated that the appellant was beaten before he told the Police what had happened, and the Magistrate stated that the appellant was returned to the Police after making his confession. Further there were details in the confession which conflicted with the evidence for the prosecution. The confession had been retracted on the first possible occasion.

Held, it was not genuine and it is of no value as evidence against the appellant. (Shadi Lal, C. J. and Campbell, J.) Harphul v. The Crown.

AIR 1923 Lah 429 : 75 IC 762 : 25 Cr LJ 58.

——Retracted confession—Value of.

See Evidence Act (1872), S. 24.

AIR 1923 Pat 13 : 24 Cr LJ 497.

——Recording of confession—Irregularity—Retraction.

Where the provisions of section 164 Criminal Procedure Code had not been complied with in recording the confession and the confession was retracted before the committing magistrate held no evidential value attached to the confession. (Wazir Hussan, A. J. C.) Gajadhar v. Emperor.

AIR 1923 Oudh 39 : 9 OLJ 500.

——Retracted confessions —Evidentiary value.

See Evidence Act (1872), S. 30.

11 Cr LJ 71 (Oudh).

21. Retracted confession—
(e) What amounts to.

——Ss. 164 and 342—Retracted confession— (Evidence Act, S. 24).

The answers which the accused gives in the committing Magistrate's Court on being questioned under S. 342 may amount to a retraction of his guilt, but by giving those answers he cannot be said to have retracted the confession itself if he specifically admits to have made it. (Chowdhry, J. C.) Findal v. State.

AIR 1954 Him Pra 11 : 1953 Cr LJ 1900.

——Just before certificate.

A Magistrate complying with necessary formalities recorded the statement of the accused and had the necessary thumb mark affixed on it on his admitting its correctness. He then proceeded to append his certificate and while the certificate was being written, the accused stated that the statement was made at the instance of police. On his persisting in that statement he recorded further statement on which the accused clearly stated that the statement was made at the instance of police.

Held, that the accused must be regarded as having made no confession inasmuch as although statement had been recorded fully and correctness admitted, the requirements of S. 164 had not been fully complied with by Magistrate before the accused resiled. (Broadway and Agha Haidar, JJ.) Arjan Singh v. Emperor.

AIR 1930 Lah 257 : 119 IC 325 : 30 PLR 646 : 1930 Cr C 289 : 11 Lah 106 : 30 Cr LJ 1046.

22. 'Shall then be forwarded'.

——Statement recorded under S. 164 —Its return to witness or Pleader is illegal.

Under sub-s. (2) of S. 164, Criminal P. C., statements or confessions recorded are to be forwarded to the Magistrate by whom the case is to be tried or inquired into. Returning of statements recorded under S. 164, either to witnesses or to the Pleader is wholly illegal. (Mosely, J.) T. M. Mohamed Cassim v. Shaik Thumby Shaib.

AIR 1940 Rang 33 : 12 R Rang 310 : 187 IC 77 : 41 Cr LJ 392.

——Confession — Magistrate recording confession should avoid handing over document after completion to Police in charge of prisoner— Prejudice not caused — S. 164 (2), if complied with.

A Magistrate who records a confession under S. 164, Criminal P. C., should avoid handing over the document after completion to the Police in charge of the prisoner, but should forward it as required by sub-s. (2) of S. 164, Criminal P. C., direct to the Magistrate by whom the case is to be enquired into or tried. But where there is no suggestion that it was tampered with in transit and no prejudice has been caused to the accused by the method of forwarding the statement actually adopted, there is substantial compliance with the provisions of the section. (Young C. J. and Sale, J.) Hans Raj v. Emperor.

AIR 1936 Lah 341 : 8 RL 811 : 37 PLR 605 : 16 Lah 345 : 161 IC 900 : 37 Cr LJ 504.

23. Verification.

——Statement of accused recorded by Magistrate —Verification report by him not addressed to any one is not admissible.

Verification report of the confessional statement of the accused made by a Magistrate not addressed to any authority and without any endorsement of despatch or receipt, is evidently of a doubtful character and has no probative value and is, therefore, not admissible in evidence so far as the confessional statement of the accused is concerned.

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(In this case the confessional statement of the accused was recorded by the Magistrate, and of whose verification the report was, was itself inadmissible). (Lakshmi Narain, J. C.) P. K. Subbiah v. State.

AIR 1952 Tripura 1 : 1952 Cr LJ 1201.

——Statements made to verifying Magistrate in course of proceedings.

Verification proceedings are undertaken, with a view to testing the truth of a confession and to obtain evidence either corroborating the confession or indicating its falsity. In so far at least as such evidence may be obtained, for instance, in ascertaining that the prisoner is familiar with or wholly ignorant of the localities of which he has spoken or in furnishing clues to further enquiry, such proceedings may be useful. Statements made by the accused to the verifying Magistrate in the course of the proceedings if they are not recorded in the manner provided in S. 164, Criminal P. C., are inadmissible. (Guha, Bartley and Nasim Ali, JJ.) Jitendra Nath v. Emperor.

AIR 1937 Cal 99 : 10 RC 69 : 169 IC 977 : 38 Cr LJ 818 (SB).

——Verification of confession— Statements made by accused in the course of proceedings.

Per Tuenon, J.—Although the verification of a confession is not wholly illegal the statements made by the accused in the course of the verification proceedings having been made in the course of an investigation and recorded in the manner provided in S. 164 are not inadmissible. Per Huda, J.—The verification of a confession in the presence of the accused leads itself to very great abuses and should be avoided. 17 C W N 220, Appr. (Tuenon and Huda, JJ.) Amiruddin Ahmad v. Emperor.

AIR 1918 Cal 88 : 45 Cal 557 : 22 CWN 213 : 27 CLJ 148 : 44 IC 321 : 19 Cr LJ 305.

24. Warning.

(a) Absence of.
(b) Fresh warning.
(c) Magistrate not disclosing his identity.
(d) Nature and sufficiency of.
(e) Presumption.
(f) Recording of.

24. Warning—

(a) Absence of.

——S. 164(3) — Confession — Warning to accused.

A confession is not invalidated on the mere ground that the accused was not specifically warned by the Magistrate recording his confession that his confessional statement, even if retracted later, may be used as evidence against him. (Jagannadhadas and Panigrahi JJ.) Khalli Behra v. The State.

AIR 1951 Orissa 78 : 16 Cut LT 186.

CRIMINAL P. C. (V of 1898), S. 164—24. Warning—

(a) Absence of

——Ss. 164, 533 — Non-compliance with S. 164 (3) —Defect, if curable under S. 533 — Admissibility of confession — Evidence Act (1872), S. 29.

The failure of a Magistrate recording a confession to satisfy himself on the day of his recording the confession that the confession is being made voluntarily is not a defect of form which can be cured but of substance which vitiates the confession.

The Court must find out how far a confession can be acted upon where the accused had no warning according to S. 164 though such confession is admissible in evidence according to S. 29, Evidence Act. (Govinda Menon and Krishnaswami Nayudu JJ.) In re Karunthambi.

AIR 1950 Mad 579 : 1950 MWN 293 : 63 MLW 449 : 1950-1 MLJ 659 : 1950 MWN Cr 73 : 51 Cr LJ 1047.

——Ss. 164 (3) and 533 — Failure to give warning to accused that he is not bound to confess renders confession bad in law — Warning held did not comply with S. 164 (3).

The provision of the first part of S. 164 (3) that a Magistrate shall before recording any confession, explain to the person making it that he is not bound to make a confession and that if he does so, it may be used as evidence against him, is of a substantive character and not merely a matter of form and non-compliance with it renders the confession inadmissible in evidence. The defect is not cured under S. 533.

The warning by the Magistrate to the accused was as follows. "It is not necessary for you to make a statement at the instigation or under the threat of the police. You say what you think yourself to say":

Held that there was not a single word in the whole of the warning which conveyed to the accused that he was not bound to make a statement and therefore the first part of S. 164 (3) was not in fact or substance complied with. (Das and Ray JJ.) Punia Mullah v. Emperor.

AIR 1946 Pat 169 : 24 Pat 646 : 1945 Pat WN 397 : 228 IC 51 : 13 BR 120 : 48 Cr LJ 30.

——S. 164 (3) — Direction that accused should be warned that he is not bound to make statement, if mandatory — Repugnancy with Evidence Act (1872), S. 29.

(Per Bennett J., Ray J. contra.)—Directions given in the opening phrase of S. 164 (3), to warn the accused that he is not bound to make a statement are not mandatory but directory and the failure of the Magistrate to give the warning would not by itself be sufficient to render the confession inadmissible. In this way, S. 29, Evidence Act and S. 164 (3), Criminal P. C., can be read together: AIR 1936 P C 253, Expl.; Case law considered. (Per Bennett J.; Ray J., contra). — Even if the direction is mandatory, the questions and explanations, such as (1) "why do you want to make a statement?" (2) "your statement may be used in

CRIMINAL P. C. (V of 1898), S. 164 — 24. Warning —(a) Absence of

evidence against you;" and (3) "think over the matter again" impliedly conveyed to the accused that he was not bound to make a statement. (Bennett and Ray JJ.) Emperor v. Jamuna Singh.

AIR 1947 Pat 305 : 25 Pat 612.

——Maker of statement not warned — Defect, if cured by S. 29, Evidence Act.

Where a Magistrate has not, before recording a confession, explained to the person making it that he was not bound to make a confession and that if he did so it may be used as evidence against him, and thus has not complied fully with S. 164, Criminal P. C., the defect is not fatal in view of S. 29, Evidence Act. (Mohammad Ismail and Hamilton, JJ.) Emperor v. Nanua.

AIR 1941 All 145 : 1941 ALJ 86 : 1941 AWRHC 65 : 1941 OWN 337 : 13 RA 463 : ILR (1941) All 280 : 193 IC 873 : 42 Cr LJ 485.

——Confession — Voluntary and corroborated — Magistrate's failure to warn that accused will not be taken as approver — Effect indicated. (Burn & Lakshmana Rao JJ.) Chinia Abboyi Raddi v. Emperor.

1937 MWN 977 (2).

——Ss. 134 (3), 533 — Failure to convey caution to accused — Admissibility.

Where, in recording a confession, the Magistrate fails to convey the caution required by S. 164 (3), Criminal P. C., to the confessing accused, that he is not bound to make a confession and that if he confesses, it may be used as evidence against him, the failure invalidates the confession and makes it inadmissible in evidence against the accused. (Barlee and Wadia, JJ.) Housabai Bala Shinde v. Emperor.

AIR 1932 Bom 553 : 56 Bom 542 : 34 Bom LR 1240 : Ind. Rul. (1933) Bom. 30 : 140 IC 740 : 34 Cr LJ 73.

——Confession — Caution not administered to accused — Evidence Act (I of 1872), S. 29.

Section 164, Criminal P. C., does not pretend to override S. 29, Evidence Act. Though S. 164, Criminal P. C., makes it imperative that the accused person should be cautioned, S. 29, Evidence Act, says that his statement is not inadmissible in evidence merely because the prescribed caution has not been administered. On a question of the admissibility of a particular piece of evidence, it is the Evidence Act that has to be looked to. (Waller and Krishnan Pandalai, JJ.) Vellamoonji Goundan v. Emperor.

AIR 1932 Mad 431 : 35 MLW 542 : 55 Mad 711 : 69 MLJ 559 : Ind Rul (1932) Mad 459 : 1932 MWN 449 : 137 IC 863 : 33 Cr LJ 526.

——Where there is nothing to show that the accused was told that he need not make a confession and that if he did so it might be used as evidence against him, his confession is inadmissible in evidence. (Scott Smith and Fforde, JJ.) Bahawala v. Crown.

AIR 1925 Lah 432 : 88 IC 854 : 6 Lah 183 : 26 PLR 331 : 26 Cr LJ 1238.

CRIMINAL P. C. (V of 1898), S. 164 — 24. Warning —(a) Absence of

——Ss. 164 and 533 — Warning not given by Magistrate — Confession defective.

Where the record does not show whether the Magistrate gave due warning to the accused that the confession is defective, the defect is curable by S. 533 on taking Magistrate's evidence that the warning was given in fact. (Jwala Prasad and Sultan Ahmad. JJ.) Maksud Ali v. Emperor.

AIR 1921 Pat 337 : 2 Pat LT 773 : 60 IC 56 : 3 UPLR (Pat) 18 : 22 Cr LJ 200.

——Confession — Not in accordance with law.

A confession in answer to a question "After due warning do you want to say anything?" without any indication of what the due warning was, is not a confession recorded in accordance with law. (Coutts and Ahmad, JJ.) Madhu Majhi v. Emperor.

AIR 1921 Pat 306 (1) : 2 Pat LT 129 : 59 IC 551 : 22 Cr LJ 119.

24 Warning—

(b) Fresh warning.

——S. 164 (3) — After recording part of confession on previous day accused produced next day — Fresh warning to accused that he was not bound to confess is necessary.

Where after recording part of his confession on the preceding day, the accused is produced the next day, the Magistrate before recording the confession must give a fresh warning to the accused that he was not bound to make a statement and if he did so it may be used as evidence against him, even if such warning had been given on the previous occasion. The confession recorded without giving a fresh warning is inadmissible in evidence. The defect is not cured under S. 533. Observations of Meredith J. in AIR 1940 Pat. 163 and AIR 1925 Cal. 587, Rel. on. (Das and Ray, JJ.) Punia Mallah v. Emperor.

AIR 1946 Pat 169 : 24 Pat 646 : 1945 PWN 397: 228 IC 51 : 13 BR 120 : 48 Cr LJ 30.

24. Warning—

(c) Magistrate not disclosing his identity.

——Magistrate not informing accused that he was Magistrate and not recording that no police was present and writing that he was sub-divisional officer.

Though S. 164 does not, in so many words, require it, yet unless the accused person is told that he is before a Magistrate and under his protection and that he is no longer in the custody of the police, it is not likely that he would have the courage to give correct answers to the questions that a Magistrate has to put to him under S. 164 (3).

Where it is not recorded that no policeman was present at the time when the confession was made before the Magistrate and the Magistrate instead of writing that he was a Magistrate, first class, wrote that he was a Sub-Divisional Officer, and the Magistrate also had not informed the accused that he was a Magistrate, first class.

CRIMINAL P. C. (V of 1898), S. 164— 24. Warning —(c) Magistrate not disclosing his identity

Held that these are defects which do not make the confession inadmissible in evidence. They may only detract from its evidentiary value. (Malik C. J. and Bind Basni Prasad J.) Rex v. Moti.

AIR 1953 All 792 : 1953 All LJ 507 : ILR (1953) 2 All 307 : 1953 Cr LJ 1829.

——Officer recording confession not disclosing his identity.

A confession that was recorded by an officer without disclosing his identity to the accused cannot be said to comply with the strict formalities required by S. 164 and on that ground alone it should be ruled out as inadmissible. (Panigrahi and Narasimham, JJ.) Sanatan Badchat v. State.

AIR 1953 Orissa 149 : 18 Cut LT 345 : ILR (1952) Cut 620 : 1953 Cr LJ 1008.

24. Warning—

(d) Nature and sufficiency of.

——Warning to the accused.

The failure to tell the accused that he was not bound to confess is certainly an omission of one of the cautions mentioned in S. 134 and calls for the rejection of the confession. (Krishnan J. C.) Khandhai v. State of V. P.

AIR 1953 Vind Pra 38 : 1953 Cr LJ 1193.

——Ss. 164 (2) and (3) and 364 — Warning to the accused — Requirements of — (Travancore Criminal P. C., Ss. 162 and 301) — Evidence Act (1872), S. 90.

Direction in S. 364 applies only to the statement proper given by the accused. If the warning given to the accused by the Magistrate before proceeding to record the confessional statement is also given by putting the necessary questions to him and eliciting the answers to such questions, then such questions and answers also should be recorded in the statement because it would then form part of the statement given by the accused. But the warning could also be given by simply explaining to the accused that he is not bound to make a confession and that if he does so it may be used as evidence against him. In such a case the warning will not form part of the statement of the accused and as such it cannot be said that it should form part of the confessional statement itself. It is also significant to note that there is no express direction in S. 164 as to the form in which the warning is to be given or that it should form part of the confessional statement itself. On the other hand from the form of the certificate to be added at the foot of the confession, it is clear that it will be sufficient compliance with the provisions of the section that if the confession has been recorded after the warning has been given to the accused in the first instance and after the Magistrate is satisfied that the accused is giving confession voluntarily in spite of the warning given to him. When the confession contains a certificate of a memorandum at its foot as required by S. 164 a presumption arises under S. 90 of the Evidence Act that all the necessary formalities have been duly complied with and that the statements contained in the memorandum are true and correct. (Shankaran and Subramania Iyer, JJ.) Mathai Mathew v. State.

CRIMINAL P. C. (V of 1898), S. 164 — 24. Warning —(d) Nature and sufficiency of

AIR 1952 TC 305 : 1952 Ker LT 728 : 1952 Cr LJ 1304.

——Sufficient warning.

See Evidence Act (1872), S. 29.

1952 Raj LW 269 : ILR (1952) 2 Raj 93.

——S. 164 (3)—Form of questions.

Section 164 (3) does not lay down any specific form of words in which the Magistrate is required to give the necessary explanation. It is sufficient that before the confession was made it was brought home to the mind of the accused that he was not bound to make a confession. (Bennett and Ray, JJ.) Emperor v. Jamuna Singh.

AIR 1947 Pat 305 : 25 Pat 612.

——The Magistrate recording the confession under S. 26, Evidence Act, when he knows that the confession relates to some definite crime which has been committed and which is being investigated at the time acts under S. 164, Criminal P. C., and has to observe the rule laid down in sub-s. (3) of S. 164. Where the Magistrate nas only said to the accused that he should think over the matter and state what really happened as otherwise the statement would be used against him, this does not satisfy the rule in sub-s. (3) of S. 134, and the confession is not admissible. (Lakshmana Rao and Stodart, JJ.) In re Perumal Kudumban.

AIR 1940 Mad 562 : 1940 MWN 358 : 51 MLW 535 : 13 RM 481 : 191 IC 37 :42 Cr LJ 64.

——Where, in a murder case, the two accused out of the three made a confession to the effect that the 3rd accused had murdered the deceased and that they had only helped to dispose of the body and the confession was sufficiently corroborated by their own conduct in taking the Police to the place where the body was buried and other evidence, the confession is not vitiated by the fact that the Magistrate recording the confession did not warn them that they would not be taken as approvers, if he told them that whatever statements they might make would be used as evidence against them and it appears from the record that the Magistrate had satisfied himself that the confessions were voluntary. (Burn & Lakshmana Rao, JJ.) Chinna Abbayi Reddi v. Emperor.

1937 MWN 977 (2).

——It is sufficient compliance with the law if the accused when asked whether he wishes to make a statement voluntarily, replies that he does, then he is warned that any statement he might make would be used as evidence against him and even then he replies that he is willing to make a statement. (Adami and Bucknill, JJ.) Nilmadhab Choudhury v. Emperor.

AIR 1926 Pat 279 : 7 AI Cr R 75 : 5 Pat 171 : 96 IC 509 : 27 Cr LJ 957.

——The provisions of S. 164 (3) render it incumbent on a Magistrate who is called on to record

CRIMINAL P. C. (V of 1898), S. 164— 24. Warning — (d) Nature and sufficiency of

a confession to explain to the person who is to make it that he is not bound to make a confession at all, and that if he does so it may be used as evidence against him. Further the Magistrate should only record the confession if upon examination of the person making it, he has reason to believe that it will be made voluntarily. (Broadway and Addison, JJ.) Partap Singh v. Emperor.

AIR 1925 Lah 605 : 93 IC 978 : 6 Lah 415 : 7 LLJ 482 : 27 Cr LJ 514.

——The principal requirement introduced by the Amending Act in S. 164 is that a Magistrate before recording any confession should explain to the person making it that he is not bound to make a confession, and that if he does so it may be used in evidence against him. The confession becomes inadmissible if this essential requirement is not complied with. (Le Rossignol and Fforde, JJ.) Mt. Rao v. Crown.

AIR 1925 Lah 367 : 88 IC 599 : 7 LLJ 170 : 26 PLR 173 : 26 Cr LJ 1175.

——Real caution must be given.

Confessing accused are almost invariably unarmed beforehand of the necessary cautions, and are given to understand that if they do not reply satisfactorily to the questions that will be put to them, their statements will not be accepted; but this is not proper. (Wazir Hasan and Cuming, A. J. Cs.) Mahadeo v. King-Emperor.

AIR 1924 Oudh 65 : 10 OLJ 280.

24 Warning—

(e) Presumption.

——S. 134 (3) — Presumption as to warning to accused.

The Magistrate's mere admission, in cross examination that he filled up the form of questions and answers required by S. 164, Criminal P. C., in recording confession as a matter of routine is not sufficient in itself substantially to throw doubt on the statement, which the Magistrate certified by his signature to the prescribed memorandum, that he had given the prescribed warning to the accused that he was not bound to make the statement. This circumstance is not sufficient in itself to displace the presumption which the Court is directed to make by S. 80, Evidence Act. (Bennett and Ray, JJ.) Emperor v. Jamuna Singh.

AIR 1947 Pat 305 : 25 Pat 612.

24 Warning—

(f) Recording of.

——Preliminary warnings by Magistrate — Whether part of confession.

Preliminary warnings given by the Magistrate to the accused making a confession are not part of the confession. The confession is not vitiated because of the Magistrate not writing down the warnings given by him to the accused in vernacular, especially when the Magistrate was actually put into the witness box by the prosecution where he gave evidence as to the actual warnings which were given by him to the accused. (Cunliffe and Henderson, JJ.) Emperor v. Arajaddin Molla.

CRIMINAL P. C. (V of 1898), S. 164 — 24. Warning — (f) Recording of

9 RC 357 : 40 CWN 872 : 165 IC 196 : 37 Cr LJ 1101.

——Omission to record in certificate that accused had been told he need not make confession — Magistrate's testimony that he informed accused of it.

Where a confession was made immediately after the murder in a separate room in the Police Station where no Police Officer was present and the Magistrate omitted to state in his certificate that the accused had been told that he need not make a confession but the Magistrate deposed that he did inform the accused of the fact:

Held, that the confession was voluntarily made, was true and reliable and could be acted upon. (Harrison and Dalip Singh, JJ.) Drummond v. Emperor.

AIR 1933 Lah 311 (2) : 34 PLR 702 : Ind Rul (1933) Lah 434 : 144 IC 296 : 34 Cr LJ 712.

——S. 164 (2) — Magistrate's warning, whether should appear at the commencement of the record —Memorandum, if should be in Magistrate's handwriting — English version of confession — Affixing of memorandum with English version. AIR 1932 Bom. 553 : 34 Cr LJ 73, overruled.

Under S. 164, Criminal P. C., it is necessary that the Magistrate, before recording the confession should warn the accused that he is not bound to make a confession. The Code does not provide for this warning being recorded otherwise than in the memorandum at the foot of the record.

It is not necessary that this warning should appear in writing at the commencement of the record. All that the Code requires is that this memorandum should appear at the foot of the record. The memorandum need not be made in the handwriting of the Magistrate. It is enough if it is signed by him.

Once the memorandum has been made in accordance with S. 164 (3), the mere fact that it was attached to the English memorandum of the original vernacular confession, the English memorandum also forming part of the record, is a sufficient compliance with law. AIR 1932 Bom. 553 : 34 Cr LJ 73, overruled. (Baker, Murphy and Broomfield, JJ.) Tukaram Khandu v. Emperor.

AIR 1933 Bom 145 : 35 Bom LR 234 : Ind Rul (1933) Bom 261 : 57 B 336 : 143 IC 280 : 34 CR LJ 555 (FB).

——S. 164 (3) — Record not showing that accused was warned — Certificate at end of confession that accused was warned not in Magistrate's handwriting — Prejudice to accused can be presumed — Confession is inadmissible — Criminal P. C. (1898), S. 533.

The record clearly showed that the question that the accused was not bound to make the confession was not put, and the Magistrate who was called as a witness admitted that he failed to write it down.

CRIMINAL P. C. (V of 1898), S. 164—24. Warning—(f) Recording of

Held that the error can be assumed to have injured the accused as to his defence on the merits and the confession was inadmissible against the accused though the warning under S. 164 (3) was appended at the end scribed by a clerk and signed by the Magistrate. AIR 1929 Bom 327, Dist. (Barlee and Wadia, JJ.) Housabai Bala Shinde v. Emperor.

AIR 1932 Bom 533 : 56 B 542 : 34 Cr LJ 73.

(Overruled in AIR 1933 Bom 145 : 34 Cr LJ 555)

——Where there is no record that the Magistrate gave any warning to the accused before recording his confession, the confession so recorded is extremely defective. Prejudice that may be caused to the accused persons by such a record cannot be exaggerated. But defects of this character can be remedied under S. 533. (Jwala Prasad and Sultan Ahmad, JJ.) Maksud Ali v. Emperor.

AIR 1921 Pat 337 : 60 IC 56 : 2 PLT 773 : 22 Cr LJ 200.

25. Who can record.

——Ss. 164, 176 (1), 364 and 533 (1) — Who can record statement or confession — Magistrate holding inquest under S. 176 — Non-compliance with S. 364.

It cannot be said that no Magistrate can ever record a confession from an accused person except in strict conformity with S. 164. Section 164 does not mean that a Magistrate of the second class not empowered under S. 164, Cr. P. C. and a Magistrate of the third class can under no circumstances record or give oral evidence of a confession made to them. Thus, a Magistrate holding an inquest under S. 176 and not empowered to record confessions under S. 164 can record a confession, as the powers under S. 176 (1) include the power of taking down any statement, whether it be a confession or not, from any person who knows anything about the cause of death. It is not necessary for the Magistrate to immediately send the accused to a Magistrate empowered to record confessions under S. 164. The confession should be recorded in the form of questions and answers as required by S. 364; but the failure to comply with this provision may, in the circumstances of a case, be curable under S. 533 (1). (Mack and Chandra Reddy, JJ.) Ramaswami Reddiar, In re.

AIR 1953 Mad 138 : 1952 Mad WN 897 : 1952 Mad WN Cr 253 : 1952-2 Mad LJ 814 : ILR (1953) Mad 924 : 1953 Cr LJ 315.

——Recording of confession.

Practice of recording confessions and conducting identification proceeding should be confined only to those who do regular magisterial work and are at least in touch with the law as enunciated from time to time by the Court. (Atma Charan, J. C.) Duli Chand v. State.

AIR 1952 Ajmer 54 : 1952 Cr LJ 1575.

——Magistrate recording confession if can act as committing Magistrate — Criminal P. C. (1898), S. 215.

CRIMINAL P. C. (V of 1898), S. 164 — 25. Who can record

Though there is nothing illegal for a Magistrate who has recorded a confession to conduct the preliminary inquiry it is but proper that a Magistrate who would be a witness in the case should, as far as possible, not be the committing Magistrate. (Govinda Menon and Krishnaswami Nayudu, JJ.) In re Karunthambi.

AIR 1950 Mad 579 : 1950 MWN 293 : 63 MLW 449 : 1950 1 MLJ 659 : 1950 MWN Cr 73 : 51 Cr LJ 1047.

——Ss. 164 and 364 — Confession recorded by Magistrate not empowered to do so — 'Admissibility'.

A confession recorded by a Magistrate who has not been empowered by Government to record confessions is not admissible in evidence — Nor can the Magistrate give oral evidence of the confession; 63 I A 372 and AIR (26) 1939 Rang 219 Foll.; AIR (21) 1934 Rang 78, held impliedly overruled by 63 I A 372; 16 Bom LR 261, Disting. (Thein Maung, J.) Tun Kha v. The King.

1948 Bur LR 49.

——Formalities.

The Coroner while recording statement of accused, need not comply with all the formalities laid down by the Bombay High Court Circular with regard to confessions recorded by Magistrates under S. 164, Criminal P. C. (Divatia, Lokur and Weston, JJ.) Government of Bombay v. Dashrath Ramnivas.

AIR 1945 Bom 265 : 47 Bom LR 145 : 18 RB 163 : ILR (1945) Bom 614 : 220 IC 182 : 46 Cr LJ 714 (FB).

——Deputy Tahsildar empowered to record confessions but subsequently sent on foreign service —On being recalled, was posted as Tahsildar — No fresh notification issued empowering him once more as Tahsildar to record confessions:

Held, that the Govt. in retaining some form of control over his services even when he was on foreign service, had recalled him to direct service under Govt. and then having recalled him, had posted him as Tahsildar. His case, therefore fell, directly under S. 40 and the confessions which he had recorded were not invalidated. (King and Sahabuddin, JJ.) In re Ramratnam.

AIR 1944 Mad 302 : 1944 MWN 57 : (1944) 1 MLJ 91 : 57 MLW 100 : 220 IC 129 : 46 Cr LJ 667.

——Ss. 164, 529, 530 — Proceedings under S. 164, void on ground of Magistrate not being empowered — S. 529, or S. 530, whether prohibits setting aside of proceedings.

Proceedings under S. 164, Criminal P. C., are not mentioned in either S. 529 or S. 530, as proceedings which are not to be set aside on the ground of a Magistrate not being empowered, or as void owing to that lack of power. (Mosely, J.) Sulaiman v. The King.

AIR 1941 Rang 301 : 1941 Rang LR 258 : 14 R Rang 110 : 197 IC 131 : 43 Cr LJ 123.

CRIMINAL P. C. (V of 1898), S. 164—25. Who can record

——Ss. 164, 364—Enquiry under Regulation 737 by Magistrate —Statement under S. 164—When can be used against persons making them.

Inquiry under Regulation 737, should be conducted by a Police Officer and not by Magistrate. The Magistrate, however, would not cease to be a Magistrate because he is doing the work of a Police Officer conducting an inquiry under Regulation 737 under the order of the District Magistrate as the head of the Police. Where, during the enquiry, he exercises the powers of a Magistrate and administers oath, the statements made by the suspects must be deemed to have been recorded under S. 164, Criminal P. C. Such statements cannot be used against the accused unless they had been formally recorded as confessions under S. 164 read with S. 364 of the Criminal P. C. (Niyogi, J.) In re Dinanath Ganpat Rai.

AIR 1940 Nag 186 : ILR (1940) Nag 232 : 13 RN 58 : 1940 NLJ 667 : 189 IC 591 : 41 Cr LJ 757.

——Trial by recording Magistrate.

It is not always necessary that the recording Magistrate must be some one other than a Magistrate who has begun an enquiry into the guilt of the persons alleged to have been confederates of the confessing prisoner. (Coldstream and Jailal, JJ.) Mohinder Singh v. Emperor.

AIR 1932 Lah 103 : Ind Rul (1932) Lah 81 : 33 PLR 891 : 135 IC 209 : 33 Cr LJ 97.

——Presidency Magistrate's powers.

The change by amendment of 1923 is made to allow a Presidency Magistrate to record a confession in the course of police investigation. Although S. 1 bars the application of the Code to the police it does not bar an application of the Code to a Magistrate or any Magistrate not being a police officer. (Adami and Bucknill, JJ.) Nilmadhab Chaudhury v. Emperor.

AIR 1926 Pat 279 : 7 AI Cr R 75 : 5 Pat 171 : 96 IC 509 : 27 Cr LJ 957.

——Powers of Magistrate—Territorial jurisdiction.

In recording a confession under S. 164, a Magistrate does not perform an act but exercises his power and this power of a Magistrate is limited to the district in which he is appointed. Quaere:—Whether he can exercise it outside British India. (Walsh and Ryves, JJ.) Nahar Singh v. Emperor.

AIR 1921 All 61 : 19 ALJ 355 : 3 UPLR (All) 66 : 62 IC 583 : LR 2 A (Cr) 33 : 22 Cr LJ 567.

——S. 165.

See also (1) ibid, S. 435.

(2) Arms Act (1878), S. 25.

SYNOPSIS

1. **Scope of Section 165.**
2. **Offence to be investigated.**
3. **"Anything necessary".**
4. **"Any place".**
5. **Record of grounds of belief.**
6. **Nature of search.**
7. **Sub-s. (4)—Conduct of search.**
8. **Disposal of property seized.**
9. **Resistance to illegal search.**
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11. **Search under other Acts.**
12. **Sub-s. (2)—"Conduct the search in person".**
13. **Sub-s. (3)—"Order in writing".**
14. **Sub-s. (5)—Copies of record.**

CRIMINAL P. C. (V of 1898), S. 165

1. Scope of Section 165.

——S. 165 (5)—Non-compliance —Effect on trial.

Once it is found that the evidence of the recovery of articles in a search conducted under S. 165 is reliable the fact that the search was illegal would not vitiate the trial or prevent a conviction being made. (Koshi, C. J. and Gangadhara Menon, J.) Pyli Yaccob v. State.

AIR 1953 Trav. Co. 466 : ILR (1952) Trav. Co. 937 : 1953 Cr LJ 1670.

——In an urgent case, a Sub-Inspector may make a search for an offence against the Excise Act without obtaining a warrant from the Excise Officer. But he cannot do so in a case where it is not shown that there was a great urgency and where the Sub-Inspector could have, in a short time, obtained the warrant from Excise Officer. (Bennet, J.) Ramchandra v. Emperor.

AIR 1935 All 520 : 7 RA 781 : 1935 AWR 313 : 154 IC 635 : 36 Cr LJ 551.

——Search warrant by police officer.

See Criminal P. C. Ss. 96, 105, 165.

2 Ind Cas 436.

2. Offence to be investigated.

——Ss. 165, 94 and 155 —The combined effect of Ss. 165, 94 and 155, Criminal P. C., is that without an order of a competent Magistrate, a Police Officer cannot investigate a non-cognizable case and further that even if he is so authorised, he has to observe the formalities as laid down in Ss. 165 and 94, before he can compel the production of any document or seize any incriminating article. (Din Mohammad and Blacker, JJ.) Durga Das v. Emperor.

AIR 1943 Lah 28 : 44 PLR 549 : ILR (1943) Lah 805 : 15 RL 266 : 204 IC 535 : 44 Cr LJ 301.

3. "Anything necessary".

——S. 165 not only authorises a police-officer to make a search for what is stolen and believed to be stolen property but also permits a search for anything necessary for the purposes of an investigation into any offence. (Boys and Ashworth, JJ.) Emperor v. Param Sukh.

AIR 1926 All 147 : 23 ALJ 1037 : 6 LRA Cr 173 : 91 IC 43 : 27 Cr LJ 11.

4. "Any place".

——Specific documents.

Per Page, J.—A Police Officer is entitled to search even for specific documents or things in the house of a person accused of a crime. 38 Cal 304, Diss from. (Cuming and Page, JJ.) Paresh Chandra v. Jongendra Nath.

AIR 1927 Cal 93 : 97 IC 955 : 27 Cr LJ 1195.

CRIMINAL P. C. (V of 1898), S. 165

5. Record of grounds of belief.

——(As amended in 1923) —S. 165 is mandatory—Non-compliance with its provisions is not cured by S. 99, Penal Code.

The simple safeguards incorporated by the Legislature in Section 165, Criminal P. C., are mandatory, not directory, and must be carried out immediately and fully. or as nearly so as they can be in the exigencies and circumstances of each case. Thus, the reasons recorded for the search should be sent to the Magistrate at once, though it is not necessary that they should be in the hands of the Magistrate before the search is carried out. 39 Cal 953 (P. C.); 36 Cal 433; ('26) 13 AIR 1926 Cal 663; ('35) 22 AIR 1935 Nag 237 and ('43) 30 AIR 1943 Lah 28, Rel. on.; ('24) 11 AIR 1924 Cal 1, Ref.

Unless this is done, the search is without jurisdiction and bad in law. Section 99, Penal Code, will in no way cure this, for the police officer who carries out a search under S. 165, Criminal P. C., without complying with its requirements, which are intended to be mandatory, is acting without due care and attention: ('35) 22 AIR 1935 Nag 237 and ('44) 31 AIR 1944 Pat 228, Rel. on. (Marten and Bhandari, JJ.) Emperor v. Mohammad Shah.

AIR 1946 Lah 456 : 48 PLR 53 : 228 IC 233 : 48 Cr LJ 161.

——Search—Duty to record grounds and to search the persons of witnesses who enter.

Before making a search, a Police Officer is bound to record in writing the grounds for his belief as to the necessity of searching the place and it is imperative that the persons of the search witnesses and of the Police party must be searched before they are allowed to enter the house so that the owner should not have reasonable grounds for suspecting that one of the search party had planted anything surreptitiously in his house. (Nanavutty, J.) Sohan Lal v. Emperor.

AIR 1933 Oudh 305 : Ind Rul (1933) Oudh 174 : 10 OWN 678 : 9 Luck 1 : 143 IC 467 : 34 Cr LJ 568.

——Where a Police officer decides to make a search, the reasons in writing referred to in S. 165 can be recorded at any time or in any place prior to the actual search. (Aston, A. J. C.) Asandas Hashmat Rai v. Khanchand.

AIR 1933 Sind 240 : 6 RS 189 : 148 IC 178.

6. Nature of search.

——Ss. 96 and 165—Warrant under S. 96 before investigation under Ch. 14 has commenced, for general search if can be ordered.

See ibid, S. 96.

AIR 1953 Orissa 153 : 1953 Cr LJ 1041.

——S. 165 (1)—General search.

The requirement that the officer about to make the search shall specify the thing for which search is to be made, is intended to restrain Police from conducting a general search. (Agarwala and Imam, JJ.) Ram Parves Ahir v. Emperor.

CRIMINAL P. C. (V of 1898), S. 165—6. Nature of search

AIR 1944 Pat 228 : 23 Pat 328 : 11 BR 50 : 17 RP 89 : 215 IC 102 : 45 Cr LJ 802.

——Meaning—Powers of.

Section 165 does not give any authority for the general search of the stolen property but only for specified stolen articles. A general search means a search not in respect of specific documents or things which the officer considered were necessary or desirable for the purpose of the investigation in hand but a roving enquiry for the purpose of discovering documents or things which might involve persons in criminal liability. (Cuming and Page, JJ.) Paresh Chandra Sen v. Jogendra Nath.

AIR 1927 Cal 93 : 97 IC 955 : 27 Cr LJ 1195.

——Ss. 165 and 173 — Search for stolen property —Legality—Report of investigation sent in—Fresh investigation.

A search for stolen property generally, as opposed to a search for specific stolen property is not authorised by S. 165 of the Cr. P. Code, 41 C 261 foll. 16 CWN 1078 dist. A police Officer, bona fide, conducting a search for specific stolen property is not liable in damages to the person whose house is searched. The number of investigations into a crime is not limited by law and the Police, after completing one by sending a report under S. 173 of the Cr. P. Code, may begin another on further information received. (Phillips and Krishnan, JJ.) Divakar Singh v. Ramamurthi Naidu.

AIR 1919 Mad 751 : 35 MLJ 127 : 47 IC 273 : 19 Cr LJ 901.

7. Sub-S. (4)—Conduct of search.

——Not imperative.

The provisions of Cl. (4) of S. 165 are not imperative, but they apply to a search by the police, the provisions of Ss. 102 and 103, Cr. P. Code so far as may be. (Dalal, J.) Shiam Lal v. Emperor.

AIR 1927 All 516 : 8 AI Cr R 7 : 8 LRA Cr 92 : 103 IC 108 : 28 Cr LJ 652.

8. Disposal of property seized.

——Ss. 165, 523 (1) and 550—Property seized under S. 165 and not under S. 550—Disposal of property.

Though S. 523 does not specifically refer to S. 550, it refers to those circumstances of seizure which are mentioned in S. 550.

Where, therefore, the property is seized under S. 165 and not under S. 550, its disposal is not governed by S. 523 and if the order disposing of the property cannot be passed under any other provision of the Code, the order is not one passed under the Code and must be treated as an administrative or executive order. (Desai, J.) Purshottam Das Banarsidas v. State.

AIR 1952 All 470 : 1952 Cr LJ 856.

9. Resistance to illegal search.

——Search without superior officer's authority—Assembly with common object to resist such search.

A subordinate Police Officer conducting a search

CRIMINAL P. C. (V of 1898), S. 165 — 9. Resistance to illegal search

without written authority from his superior, acts without jurisdiction. Resistance to such search is not illegal and the members of an assembly whose common object was to resist such search cannot be charged of offence of rioting. (Agarwala and Imam, JJ.) Ram Parves Ahir v. Emperor.

AIR 1944 Pat 228 : 23 Pat 328 : 11 BR 50 : 17 RP 89 : 215 IC 102 : 45 Cr LJ 802.

——Non-observance.

The non-observance of the formalities laid down in S. 165, Criminal P. C., cannot be lighty brushed aside. (Din Mohammad and Blacker. JJ.) Durga Das v. Emperor.

AIR 1943 Lah 28 : 44 PLR 549 : ILR (1943) Lah 805 : 15 RL 266 : 204 IC 535 : 44 Cr LJ 301.

——Sub-Inspector of Police proceeded to search the house of the person accused of having stolen a bicycle. He did so without complying with the provisions of S. 165 (1): The accused pushed the Police Officer back to prevent him from making the search :

Held, that the Police Officer was not acting in good faith within the meaning of S. 52, I.P.C. and the accused were not guilty of an offence under S. 352, I.P.C.

Per Mackpherson, J.—Failure on the part of a Police Officer to comply with S. 165 (5) is not a ground for holding that the search was made without due care and attention.

Quaere.—Whether failure to comply with S. 165 (1) would give room for such a finding. (Macpherson and Dhavle, JJ.) Gopi Mahto v. Emperor.

AIR 1932 Pat 66 : 10 Pat 821 : 13 PLT 62 : Ind Rul (1932) Pat 60 : 136 IC 60 : 33 Cr LJ 233.

——Ss. 165 and 166 —Search —Outside limits — Obstruction.

A Police Officer on his own responsibility has no jurisdiction to search a house outside the limits of the police station of which he is in charge. Resistance to a person conducting an unauthorised search outside the limits of his station, is no offence under S. 333 I.P.C. 27 B, 135, Ref; 30 I. C. 141 foll. (Abdur Rahim and Napier, JJ.) Krishna Ayyar v. Emperor.

AIR 1919 Mad 353 : 24 MLT 96 : (1918) MWN 526 : 8 LW 225 : 49 IC 337 : 20 Cr LJ 145.

——Contravention — Effect of.

A warrant for search of the house is invalid if it does not conform to the provisions of S. 165 and resistance to the officer is no offence. (Richards C. J. and Rafique, J.) Emperor v. Brickbhan Singh.

AIR 1915 All 430 : 38 All 14 : 13 ALJ 979 : 31 IC 995 : 16 Cr LJ 819.

——S. 165 (3) — Applicability — Obstructing public servant in discharge of his duty.

See Penal Code, S. 353.

11 Cr LJ 727 (Mad).

CRIMINAL P. C. (V of 1898), S. 165

10. Damages for illegal search.

——Directions regarding recording of grounds of search are directory and not mandatory — Police Officer having good grounds to make search making search but omitting to record grounds.

The provisions of S. 165, Criminal P. C., to the effect that before making a search, a Police Officer should record in writing the grounds of his belief, etc., are directory and not mandatory.

Where Police Officers have good grounds for making a search but omit to record the grounds of doing so, the Police Officers, assuming that they commit trespass, are justified in making the search and are not liable in an action for damages. It is, however, wrong to say that the fact that the search resulted in recovery of articles relevant to the offence justifies the illegality. The criterion for determining whether the Police Officers were right or wrong is the state of their minds at the time of making the search. (Skemp J.) Maingal Singh v. Ghulam Mohammad.

AIR 1939 Lah 280 : 12 RL 154 : 42 PLR 295 : 184 IC 6.

——Inspector relying on S. 165 — Procedure not complied with.

Where S. 165, Criminal P. C., is relied on by the Sub-Inspector making the search but it is found that he has not complied with the procedure laid down in S. 165, S. 165 cannot justify the action and he is liable to pay damages for trespass. (Pollock, A. J. C.) Hiralal v. Ramdulare.

AIR 1935 Nag 237 : 8 RN 183 : 31 Nag LR 66 (Sup) : 160 IC 306.

——Ss. 165, 166 — Police Officer acting in discharge of his duties — Inference of dishonesty.

Where the Court is satisfied that the Police Officer was conscientiously acting in the discharge of his duties according to his own lights, the mere fact that he did not comply with some procedural portions under Ss. 165 and 166, will not justify the Court to draw an inference of his dishonesty. (Wazir Hasan, C. J.) Nangu Bhagat v. Emperor.

AIR 1935 Oudh 270 : 11 OWN 485.

11. Search under other Acts.

——Search for purposes of discovering arms generally, if authorized.

See Arms Act (1878) S. 25.

8 CLJ 75

12. Sub-s. (2) — "Conduct the search in person".

——Search without warrant — Irregularity — Revision — Excise law, offence against — Non-recording of reasons before search — Whether irregularity.

Where a Sub-Inspector coming to know that illicit distillation was going on in two places in a village and seeing that the object of the search might have been frustrated if the two premises were not searched simultaneously, proceeded to the village with the Head Constable and searched one of the premises himself while the Head Cons-

CRIMINAL P. C. (V of 1898), S. 165 — 12. Sub-s. (2) —"Conduct the search in person"

table searched the other:

Held, that the procedure did not amount to an irregularity to justify interference in revision when clearly there was no miscarriage of justice.

The non-recording of reasons for suspecting the presence of articles in respect of which an offence against the Excise law had been committed before searching the premises, although an irregularity, was not one that vitiates the proceedings. (Kisch, J). Ujagar Singh v. Emperor.

AIR 1932 Oudh 249 (2) : 9 OWN 313 : Ind Rul (1932) Oudh 242 : 137 IC 621 : 33 Cr LJ 492.

——S. 135 (2) — Conduct the search in 'person'—Meaning of.

The words 'Conduct the search in person' are used in contradistinction to cases where the Police Officer is unable to go to the spot and deputes a subordinate by a written order to conduct the search in his place. It means only that the Officer should be present on the spot and exercise a general supervision over the search and not that he must himself make the search. (Ayling and Napier, JJ.) Satagopala Charlu v. Satrughna Behara.

23 MLJ 445 : (1912) MWN 1111 : 17 IC 75 : 13 Cr LJ 763.

——Conducting search in person — Inspector sitting outside and ordering Constable to search without giving him a list of articles for which search was to be made — Constable obstructed — Offence.

See Penal Code (1860) S. 353.

6 Cr LJ 105 (Mad).

13. Sub-s. (3) — "Order in writing."

——S. 165 (3) — "Search for such thing in such place" — Interpretation.

"Such subordinate officer may, thereupon, search for such thing in such place" means that he is to search only the thing which he is instructed to search and that he should search it only in the place specified in his authority. (Agarwala and Imam, JJ.) Ram Parves v. Emperor.

AIR 1944 Pat 228 : 23 Pat 328 : 11 BR 50 : 17 RP 89 : 215 IC 102 : 45 Cr LJ 802.

——S. 165 (3), applicability of, to case where officer in process of conducting search himself has part of it done under his own direction and in his own presence by one of his subordinates.

Section 165 (3), Criminal P. C. refers to a case where the officer is himself unable to conduct the search and deputes somebody else to do so. It has no application to a case in which the officer in the process of conducting that search himself, has a part of it actually done under his own direction and in his own presence by one of his subordinates. (Young, C. J. and Blacker, J.) Emperor v. Darshan Singh.

AIR 1941 Lah 297 : ILR (1941) Lah 370 : 43 PLR 536 : 14 RL 136 : 196 IC 106 : 42 Cr LJ 812.

——Specific articles.

Where a Police Officer searches a house for stolen articles for which a particular list is given to him, he is making a search for specific article and his action is not illegal. (Cuming and Page, JJ.) Paresh Chandra Sen v. Jogendra Nath.

CRIMINAL P. C. (V of 1898), S. 165 — 13. Sub-s. (3) —"Order in writing"

AIR 1927 Cal 93 : 97 IC 955 : 27 Cr LJ 1195.

——Search by subordinate Police Officer without written authority.

A subordinate officer conducting a search must have an order in writing from the superior officer specifying the thing or the document for which search is to be made and the place to be searched; where he does not possess such authority he cannot be said to be exercising a legal power. (Caspersz and Chitty, JJ.) Idu Mandal v. Emperor.

6 CLJ 753 : 6 Cr LJ 439.

14. Sub-s. (5) — Copies of record.

——S. 165 (1) and (5) — Search list and requisition made at Police Station alone produced in case — From this it cannot be presumed that there was non-compliance with S. 135 (5). (Koshi, C. J. and Gangadhara Menon, J.) Pyli Yaccob v. State.

AIR 1953 Trav Co 466 : ILR (1952) Trav Co 937: 1953 Cr LJ 1670.

——Refusal illegal.

The order directing an application for copies under S. 165 (5) to be filed is tantamount to refusing to grant the copies. Such an order cannot be treated as an extra judicial order, and being actually in disregard of the specific provisions of the law is illegal and can be set aside under S. 435. (Sulaiman, Ag. C. J.) Churamani Chaturvedi v. Emperor.

AIR 1928 All 402 : 110 IC 215 : 26 ALJ 703 : 9 LRA Cr 84 : 9 AI Cr R 536 : 29 Cr LJ 663.

——The new provision of Cl. (5) of S. 165 is intended as an extra safeguard to protect individuals against general or roving searches. and so it is essential that a police officer conducting a search under S. 165 or 163 should send forthwith to the nearest Magistrate copies of the record that he has prepared before undertaking the search. (Newbould and B. B. Ghose, JJ.) Lal Mea v. Emperor.

AIR 1926 Cal 663 : 43 CLJ 184 : 93 IC 1038 : 27 Cr LJ 542.

——S. 166.

——Parol evidence of contents of search list — Admissibility.

See ibid S. 103.

11 Cr LJ 576 (Mad).

——S. 167.

See also ibid, S. 497.

SYNOPSIS

1. Scope of Section 167.
2. Applicability of the section to security proceedings.
3. Section 167 and Section 344.
4. Powers of Magistrate.
5. Forward the accused.
6. Magistrate having jurisdiction or not.
7. "Fifteen days in the whole".
8. Reasons to be recorded.

CRIMINAL P. C. (V of 1898), S. 167

9. Detention in contravention of this section.
10. Nature of proceedings.
11. Approver's detention in police custody.

1. Scope of Section 167.

——Detention without remand — Legality — See Constitution of India, Art. 32.

AIR 1953 SC 277: 1953 Cr LJ 1113 (SC)

——Remand — Provision as to, in Code — When Magistrate can remand accused to police custody stated — Accused's surrender accepted — He cannot be remanded.

When the accused's surrender is accepted by the Court, no order of remand to the police custody can be cade.

The sub-ss. (2) and (3) of S. 167 make it very clear that the powers of remand could be used only when the accused is forwarded to the Magistrate under the provisions of S. 167. There is no other section in the Code wherein there is a similar provision of remand to police custody and in the absence of any other similar provision, the remand to police custody cannot be resorted to except under S. 167, and such a remand can be given under sub-cl. 2, only if the accused is forwarded to the Magistrate "under this section."

Obiter.—It is possible for an accused to circumvent the provision regarding remand to custody by evading arrest by the police and producing himself before the Magistrate. The Magistrate before whom such persons appear in order to circumvent the provisions regarding accused to police custody, must be very careful in accepting surrender as a bona fide surrender and in the first instance the Magistrate should inform the police concerned with the investigation regarding the intention of such a person to surrender. If that is done, the difficulty of the police would certainly be met with. (Shukla and Shroff JJ.) Kanbi Bhagwan Purshotom v. United State of Saurashtra,

2 Sau LR 183.

——There is nothing in S. 167 which indicates that the order either of detention or of release should be communicated through the Superintendent of Police. Under S. 496 where a person is accused of a non-bailable offence, the Court may grant bail and there is nothing in that section which provides that the order for release shall be communicated through the Superintendent of Police. (Bennet J.) Yakub v. Emperor,

AIR 1938 All 534 : 1938 ALJ 782 : 1938 AWR 471: 11 RA 235: 177 IC 867: 39 Cr LJ 971.

——S. 167(3) — Detention in Police custody — Power to order, limits of.

The policy of the Legislature as disclosed by the provisions of S. 167, cl. (3), Criminal P. C., is that detention in police custody should be allowed only in special cases and for such limited periods as the necessities of the case might require Such remands are not to be granted without sufficient cause being shown for them. (Wazir Hasan C. J. and Bisheshwar Nath Shrivastava J.) Jai Singh v. Emperor,

AIR 1932 Oudh 11: 8 OWN 1240: Ind. Rul. (1932) Oudh 113 : 136 IC 321 : 33 Cr LJ 287.

——Ss. 167, 344 — Remand — Accused's right to be represented by counsel — Object of remand — Proper Magistrate to grant remand — Duties of Magistrate in granting remand — Reasons, recording of — Further remand after expiry of maximum period of remand — Procedure for Police after

CRIMINAL P. C. (V of 1898), S. 167 — 1. Scope of S. 167

such expiry — Counsel's right to interview accused.

An accused is entitled to be represented by counsel in proceedings before a Magistrate under S. 167, Criminal P. C.

The object of requiring an accused to be produced before a Magistrate for purposes of remand under S. 167, Criminal P. C., is to enable the Magistrate to see that the remand is necessary and also to enable the accused to make any representation he may wish to make in the matter and legal assistance should be allowed on such an occasion.

Section 167, Criminal P. C., requires a Magistrate remanding an accused to Police custody to state his reasons in writing. The Magistrate must satisfy himself as to its necessity and the period also should be restricted to the necessities of the case.

The practice of obtaining remands from any Magistrate at the choice of the Police is open to objection. It is not necessary that the Magistrate granting a remand should be the Magistrate having jurisdiction to try the case. But this latitude is obviously left merely to provide for cases in which it may not be possible to approch such Magistrate owing to distance or similar difficulties. In the absence of such difficulties, it is desirable that the Magistrate in charge of the llaqa should be approached for the purpose.

Where the maximum period of remand allowed has expired, no further remand can be granted. If need be, it is open to the Police to adopt the procedure under S. 344, Criminal P. C.., for judicial lock-up of the accused. If no such proceedings are taken up, the accused becomes entitled to be released on bail.

While the accused is in Police custody, it is not open to the Police to deny his counsel an interview with him on the ground that he had already an interview with his relations. (Bhide J.) Bal Krishna v. Emperor,

AIR 1931 Lah 99: 32 PLR 1: 12 Lah 435 Ind. Rul. (1932) Lah 138 : 135 IC 602 : 33 Cr LJ 180.

——Intention of Legislature is that accused should be brought before Magistrate competent to try or commit, with least delay. (Mookerjee and Chatterjee JJ.) Nagendra Nath Chakrabarthi v. Emperor.

AIR 1924 Cal 476 : 81 IC 220 : 51 Cal 402 : 38 CLJ 388 : 25 Cr LJ 732.

2. Applicability of the section to security proceedings.

——Ss. 167, 110 — Scope — Remand of accused.

S. 167 applies to proceedings under Chap. XIV and not to those under S. 110 and therefore a second class Magistrate cannot remand an accused to custody against whom proceedings under S. 110 are instituted. (Tyabji and Philips JJ.) In re, Subbaraya Chetty,

AIR 1918 Mad 1186 : 39 Mad 928 : 38 IC 963 : 18 Cr LJ 403.

——Ss. 167 and 112 — Relative applicability.

S. 167 of the Code is not framed for cases where action is taken under S. 112. (Knox J.) Rameshwar v. Emperor,

AIR 1914 All 466 : 36 All 262 : 12 ALJ 365 : 23 IC 496 : 15 Cr LJ 288.

3. Section 167 and Section 344.

——Ss. 167, 344 — Accused, if can be in magisterial custody in one case under S. 344 and before a

CRIMINAL P. C. (V of 1898), S. 167 — 3. S. 167 and S. 344

Magistrate in Police custody in another case under S. 167.

An accused cannot be in magisterial and Police custody at one and the same time, that is to say, he cannot be before a Magistrate in magisterial custody in one case under S. 344, Criminal P. C., and before a Magistrate in Police custody in another case under S. 167, Criminal P. C. (Davis J. C.) Dhaman Hiranand v. Emperor.

AIR 1937 Sind 251=10 R S 124=31 Sind L R 494=171 I C 737=39 Cr L J 10.

——S. 167 (2)—Accused arrested in Bombay and sent by Presidency Magistrate to Karachi under S. 167 (2)—Remand by Karachi Magistrate under S. 167 (2)—Bombay City Police Act (IV of 1902), S. 70.

Section 70, Bombay City Police Act, must be read with S. 167 (2), Criminal P. C., and when a Presidency Magistrate sends an accused arrested in Bombay to a Magistrate in Karachi having jurisdiction, there can be no question but that he acts under the second part of S. 167 (2), Criminal P. C., and a subsequent remand, if any, granted by the Karachi Magistrate must be a remand granted not under S. 167 (2), Criminal P. C. but a remand under S. 344, Criminal P. C., and where he grants the remand under S. 167 (2), it is illegal. (Davis J. C.) Dhaman Hiranand v. Emperor,

A I R 1937 Sind 251=10 R S 124=31 Sind L R 494 =171 I C 737=39 Cr L J 10,

——Ss. 167 and 344 — Detention and remand — Magistrate's powers.

Under S. 167, a Magistrate, on the mere perusal of the entries in the police diaries relating to the case, to which the accused has no access, may from time to time, authorize the detention of the accused in custody for a term not exceeding 15 days on the whole. Thereafter, he can, under S. 344, by a warrant remand the accused for any term not exceeding 15 days at a time, if sufficient evidence has been obtained to raise a suspicion that he may have committed the offence and it appears likely that further evidence may be obtained by such remand. (Sharfuddin and Coxe JJ.) Narendra Lal Khan v. Emperor,

36 Cal 166=13 CWN 43=1 I. C. 738=9 Cr L J 375.

4. Powers of Magistrate

——Ss. 167, 438 — Magistrate seised of case refusing to remand accused to police custody — Superior Magistrate cannot direct him to do so — He should report case to High Court.

Where a judicial Magistrate after hearing the accused refused to remand the accused to police custody on the ground that the police could interrogate the accused in jail and that the accused had nothing to point out, the Additional District Magistrate has no power, without hearing the accused, to direct the Judicial Magistrate to remand the accused to police custody. He can only report the matter to the High Court for its orders. It is highly undesirable that a superior Magistrate should by his orders hamper the conduct of proceedings by the Magistrate seised of the case in accordance with the discretion of that Magistrate. The Magistrate should consider that the accused may by reason of such an order, be harassed and it is as much his duty to protect the accused from harassment as to further the detection and prevention of crime. (Kidwai J.) Raja Ram Chopra v. The State

AIR 1951 All 460.

——Detention.

Where a Magistrate receives a complaint he should either himself examine one or more complainants and take action under S. 202, or if he is taking action on his own knowledge, he should transfer the proceedings completely to another Magistrate so that that Magistrate may proceed to enquiry or trial after recording the statement of the complainant. It is also open to him to make report to police who can take action under S. 167. But so far as can be gathered from provisions of the Code a Magistrate has not the powers of a police officer to investigate and keep an accused person in custody for the purposes of such investigation; custody can only follow where definite charge has been made and complainant has been examined. (Dalal J.) Anand Behari Lal v. Emperor

CRIMINAL P. C. (V of 1898), S. 167 — 4. Powers of Magistrate

AIR 1930 All 259 = 11 L R A Cr 33 = 1930 A L J 635 = 1930 Cr C 371 = 1930 A L J 635 = 52 All 457= 126 I C 256 = 31 Cr L J 998.

5. Forward the accused

——S. 167 does not require production of an accused person before a Magistrate on the occasion of a subsequent remand—See also Constitution of India, Art. 22 (2)

AIR 1952 Assam 167 = 1952 Cr L J 1659.

——Accused person — When offender becomes accused person, stated. (Teja Singh and Mohammad Sharif JJ.) Karam Ilahi v. Emperor

AIR 1947 Lah 92 = 48 Pun L R 382= 225 I C 544= 47 Cr L J 772.

——Remand—Who can make.

An application for remand to police custody must be made by a Chief Police Officer to the Chief Magisterial Officer and the accused must be produced before him and reasons for remanding him to custody must be given. (Fletcher J.) Peary Mohandas v. Weston

16 C W N 145 = 13 I C 721 = 13 Cr L J 65.

6. Magistrate having jurisdiction or not

——Magistrate ordering remand of accused to custody after arrest need not have jurisdiction to try case.

It is not necessary for the purpose of a remand to custody that the accused after his arrest by the police should be produced before a Magistrate having jurisdiction to try the case. (Davis C. J. and Thadani J.) Ismail v. Emperor

AIR 1946 Sind 43 (48) = ILR (1945) Kar 419 = 224 I C 83 = 47 Cr L J 548.

——Principle governing.

Remands to police custody ought not to be granted except in cases of real necessity and even then the period should be fixed with due regard to the reasonable requirements of the case. When a remand to police custody is granted under S. 167, Cr. P. C., reasons must clearly be stated in the order as required by sub-s. (3) of that section. (Bhide J.) Dhruv Dev v. Emperor

AIR 1931 Lah 200 = 16 A I Cr R 94 = 129 I C 767= 1931 Cr C 320 = 31 P L R 693 = 32 Cr L J 464.

——S. 167—Scope of — Remand—Who can make.

If detention of an accused is necessary during investigation, he should be taken to the nearest Magistrate, whether or not he has jurisdiction to try the case, who should remand the accused to custody. (Knox and Karamat Hussain JJ.) Ram Sanehi v. Emperor

9 I C 148 = 12 Cr L J 15 (All)

7. "Fifteen days in the whole"

——Detention of person in police custody for 14 days under order of remand of Magistrate, for purposes of investigation into certain incidents — Detention is under orders of Court of law and not illegal. (Shripat Rao and Shrinivasa Chari JJ.) Maqdoom Mohiuddin v. State of Hyderabad

AIR 1952 Hyd 112 = ILR (1952) Hyd 122 = 1952 Cr L J 1076.

——Magistrate exercising powers under S. 167 (2), first part — Action under second part — Power under first part, if can be revived by Magistrate to whom the accused is sent.

Under S. 167 (2) of the Code, a Magistrate may authorize the detention of the accused in such custody as the

CRIMINAL P. C. (V of 1898), S. 167—7. "Fifteen days in the whole"

Magistrate thinks fit for a term not exceeding fifteen days as a whole. What is to be regarded is the period of detention under S. 167 (2) and not the nature of the custody. If the Magistrate, having ordered the accused to be detained for a period of less than fifteen days, thinks no further detention is necessary and sends him to a Magistrate having jurisdiction under the second part of S. 167 (2) of the Code, then the Magistrate to whom the accused is sent cannot himself exercise the powers already exercised by the Magistrate under the first part of S. 167 (2), Criminal P. C., even to the extent of ordering a remand to Police custody for such time as will bring the period of detention in Police custody to fifteen days. Once powers conferred by the first part of S. 167 (2) have been exercised by a Magistrate and he has taken action under the second part of S. 167 (2), then the powers under the first part of S. 167 (2), have been exhausted, and cannot be revived and continued by the Magistrate having jurisdiction to whom the accused is sent under the second part of S. 167 (2) of the Code. (Davis J. C.) Dhaman Hiranand v. Emperor

AIR 1937 Sind 251=10 R S 124=31 Sind L R 494=171 I C 737 = 39 Cr L J 10.

——On the expiry of the period of 15 days allowed under Ss. 61 and 167 the police must either release the accused under S. 167, security being taken if required or the Magistrate must take cognizance on a report under S. 173 if the report according to the Magistrate makes out a prima facie case or the Magistrate must release him. (Greaves and Panton JJ.) Bholanath Das v. Emperor

AIR 1924 Cal 614=83 I C 628 = 28 C W N 490= 26 Cr L J 68.

8. Reasons to be recorded

——Ss. 167 and 498 — Order of remand to police custody —Magistrate not applying his mind to accusation — Validity.

Under S. 167 (1) a person arrested and detained in police custody is to be forwarded to a Magistrate only when there are grounds for believing that the accusation is well founded. Where a person remotely suspected by the complainant to be concerned in the theft was arrested and detained in police custody for 36 hours without being questioned even once and then was forwarded under S. 167 to a Magistrate who ordered a further remand to police custody on the mere ground that it appeared desirable to make the order and the circumstances showed that the Magistrate had not applied his mind to the accusation against the accused and whether it could reasonably be believed that he was concerned in it, it was held that the order of remand was not justified and must be set aside, and the accused should be directed to be released on bail. (Sanghi J.) Hidayat Begam v. State

AIR 1951 M B 70 = 52 Cr L J 233.

——S. 167 (3) — Lahore High Court Rules and Orders, Vol. II—Remand to Police custody, granting of — Fixing of period—Duty to record reasons.

Remands to Police custody ought not to be granted except in cases of real necessity and even then the period should be fixed with due regard to the reasonable requirements of the case. When a remand to Police custody is granted under S. 167, Criminal P. C., reasons must clearly be stated in the order as required by sub-s. (3) of that section (Bhide J.) Dhruv Deo v. Emperor

AIR 1931 Lah 200 = 31 P L R 693 =Ind Rul (1931) Lah 239 (1) = 129 I C 767 = 32 Cr L J 464.

——S. 167 (3) — Police investigation — Order for detention of accused in police custody.

A Magistrate should consider whether, on the facts placed before him, there are good grounds for allowing

CRIMINAL P. C. (V of 1898), S. 167 — 8. Reasons to be recorded

detention in police custody. There must be something to satisfy him that the presence of the person arrested, while the police investigation was being held, was indispensable for the purpose. When a Magistrate passes an order therefor he should invariably limit the term to what may be necessary for the object in view. (Prinsep C. J. and Henderson J.) Emperor v. Kampu Kuki

11 C W N 554 = 6 Cr L J 86.

9. Detention in contravention of this section.

——Detention in police custody in contravention of section—Effect.

The detention of a person in police custody for a period longer than 24 hours in contravention of the section becomes illegal but this does not affect the power of the Magistrate to act under S. 167 when the person is brought before him to be dealt with under S. 167. (Sanghi J.) Hidayat Begam v. State,

AIR 1951 Madh-B 70=52 Cr L J 233.

10. Nature of proceedings.

—— Section is not concerned with trial of case.

Per Grille, C. J. — Under S. 167, Criminal P. C., a Magistrate does not take cognizance of the case, and the Magistrate before whom a person is produced and whose further detention is authorised under that section need not be a Magistrate who has jurisdiction to try the case at all. Section 167 has nothing whatever to do with the trial of cases. Its object is to prevent abuses by the Police and it is entirely unaffected by the Special Criminal Courts Ordinance, II of 1942. (Grille C. J. on difference of opinion between Niyogi and Digby JJ.) Sitao v. Emperer,

AIR 1943 Nag 36=ILR (1943) Nag 73 = 1943 N L J 16=15 R N 187=205 I C 161=44 Cr L J 237.

——All that can be done under S. 167 is to authorise detention. This does not amount to taking cognizance of a case or institution of judicial proceedings. (Rowland J.) King-Emperor v. Sajiwan Mahto,

23 P L T 684.

——Right of accused to get legal advice and supply of food and clothing by relatives — Prisons Act (IX of 1894), Ss. 31, 33.

Where the question whether the accused should be remanded to Police custody or sent to the judicial lock-up has been duly considered by the Magistrate and an order is made remanding the accused to Police custody, the custody cannot be held to be illegal.

An accused person is entitled to have access to legal advice under reasonable restrictions, even when he is in Police custody during the course of an investigation.

Where the Police refused to allow the legal advisers of the accused to interview him and refused to allow the relatives of the accused to supply him food and clothing during Police investigation :

Held, that a person who is merely arrested on suspicion during the course of a Police investigation cannot be placed on a worse footing than an unconvicted criminal prisoner to whom such amenities are allowed, under Ss. 31 to 33 of the Prisons Act, 1894, and the conduct of the Police was unjustifiable.

Semble : — The Police would be fully justified in satisfying themselves that no objectionable articles are supplied. (Bhide J.) Amolak Ram v. Emperor,

AIR 1932 Lah 13= Ind Rul (1931) Lah 768=12 Lah 211=32 P L R 935=133 I C 288=32 Cr L J 1022.

——Judicial.

A Magistrate acting under S. 167 has to weigh evidence to decide whether the prisoner should be detained in custody or not. Weighing of such evidence is essentially a judicial function. A Magistrate acting under S. 167

CRIMINAL P. C. (V of 1898), S. 167 — 10. Nature of proceedings

cannot therefore be said to be acting in executive capacity. (Bhide J.) Sundar Singh v. Emperor,

AIR 1930 Lah 945=1930 Cr C 1041=31 P L R 780=12 Lah 16=129 I C 481=32 Cr L J 339.

——Proceedings before a Magistrate under S. 167 fall within the provisions of S. 340. It is in the interests of justice that an accused person should have access to legal advice even while he is in police custody during the course of an investigation. An interview with the legal adviser should not therefore be refused to a prisoner who is remanded to police custody under S. 167. (Bhide J.) Sundar Singh v. Emperor,

AIR 1930 Lah 945=1930 Cr C 1041=31 P L R 780=12 Lah 16=129 I C 481=32 Cr L J 339.

11. Approver's detention in police custody.

——An approver cannot be detained in the custody of the Police. (Shadi Lal C. J. and Abdul Qadir J.) Emperor v. Ranbir Singh,

AIR 1931 Lah 480= 32 P L R 728 = Ind Rul (1932) Lah 64 (2)=135 I C 192 (2)=33 Cr L J 162 (1).

—S. 169.

——As soon as the investigation is completed, the investigating officer is to send the report to the Magistrate. Section 169 does not excuse the delay, as the section is employed only when the case is at the stage of investigation by the Police. (Thom and Bennet, JJ.) Rahat Husain v. Emperor,

AIR 1933 All 582=6 R A 370= 146 I C 896 = 35 Cr L J 208.

——Launching of prosecution against witness in another case on his own evidence.

Where a person has been released by the Police under S. 169, Criminal P. C., and examined as a prosecution witness, it is unfair to launch a prosecution against him on the basis of the statements made by him as a witness implicating himself and such a practice should be discouraged. (Bajpai J.) Chuni Lal v. Emperor,

AIR 1933 All 399 = Ind Rul (1933) All 420 = 1933 A L J 735=144 I C 380=34 Cr L J 761.

——For production before police—Void.

A surety bond for the production of any person before the police taken by the Police Officer is void ab initio. (Martineau J.) Hamid Ali v. Emperor,

AIR 1925 Lah 152=81 I C 200=25 Cr L J 712.

——Ss. 169, 514—Surety bond must be strictly construed.

The surety bond in criminal cases must be strictly construed, and a surety cannot be required to pay the amount of the bond as the result of an opinion held by the Court as to what was in his mind when he signed it. He can only be required to forfeit the amount, if the terms expressed in the bond are broken. Sureties do not bind themselves to produce the accused except on the date agreed; having done so, their liability is discharged. (Saunders J. C.) Nga Po Tin v. Emperor,

AIR 1922 U B 8=65 I C 420 = 4 U B R 71 = 23 Cr L J 68.

——Release of persons accused.

Persons who have been found to be not concerned in any cognizable offence and against whom there is no reasonable complaint or suspicion must be at once released, and any further detention of them is not warranted by law. (Knox J.) Emperor v. Ganesh,

AIR 1915 All 413=12 A L J 336=26 I C 144= 15 Cr L J 696.

——Ss. 169, 173 and 190 (1) (c) — Magistrate's power to order prosecution of person not arrested by police — The

CRIMINAL P. C. (V of 1898), S. 169

accused was sent up by the police for an offence before a Magistrate. The Magistrate acquitted the accused but stated in his judgment that the police will take action against another person for that offence. The Magistrate was not empowered under S. 190 (1) (c) to take cognizance of offence of his own motion. Held, that the Magistrate had the powers, on receipt of information from the police, to order the prosecution of any person, who, in his opinion, ought to be put upon his trial; a fortiori after taking evidence, he is in a better position to know what the police ought to do then on receiving only the first information report put up before him. (Irwin J.) Hakim Ally v. King-Emperor,

4 L B R 137=7 Cr L J 414.

—S. 170.

——S. 170 (1) — One or other of two persons or both likely offenders—Charge-sheet against both.

Where the offence is likely to have been committed by one or the other of the two persons or by both, but only one of them has been prosecuted, there are bound to be accusations and counter accusations without the Court being sometimes able to decide who the guilty person was. It is but elementary practice in such cases for the police to submit a charge-sheet against both, whether as principal offenders, or as one of them being an abettor or a conspirator, as the case may be. (Chowdhry J. C.) State v. Krishan Dayal,

AIR 1952 Him Pra & B 46=1952 Cr L J 1128.

——A Police report mentioned in S. 190 (b), Criminal P. C., is not limited to a report mentioned in S. 170 of the Code and the preceding section. (Ghulam Hasan J.) Lalu Singh v. Emperor,

AIR 1943 Oudh 226 =1943 O W N 80=1943 A W R C C 11=15 R O 474=206 I C 107=44 Cr L J 492.

——Innocent persons falsely implicated — Investigating officer, if justified in not sending them for trial on ground of insufficient evidence.

Where definite allegations are made by aggrieved persons which they are prepared to support by positive evidence, apparently free from taint, it is generally not the function of the Police to play the role of Judges and to pronounce their verdict on the truth or falsehood of those allegations. In such cases, they are bound to send up the accused for trial and not to discuss the probabilities or the improbabilities of the case and come to a final decision of their own. But where there is a tendency to implicate innocent persons along with the guilty whenever any occasion arises in that respect, not only the Courts but the investigating officers must proceed cautiously when they are faced with the situation. A Police Officer is in the same position as a Magistrate holding inquiry in cases triable by a Court of Session, and such Magistrate has power to discharge an accused person if the evidence against him is palpably false or legally insufficient. Where the investigating officer not being satisfied with the evidence against some of the accused, feels that they are falsely implicated, he is justified in not sending them for trial. (Din Mohammad J.) Jaimal Singh v. Emperor,

AIR 1939 Lah 523 =ILR (1939) Lah 307= 41 P L R 763=12 R L 275=185 I C 266=41 Cr L J 146.

——Ss. 170, 337—Prima facie case against accused—His testimony, if can be used against co-accused even though no pardon is granted to him. A I R 1920 Nag 255 : 21 Cr L J 769, Overruled.

When the Police refrain from prosecuting a person against whom there is adequate evidence to justify his production for enquiry and trial before a Magistrate under S. 170, Criminal P. C., he can be a competent

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witness, even where he is not tendered a conditional pardon under S. 337, Criminal P. C. There is nothing in the Code which forbids administration of oath to such a person. But this method of obtaining evidence is contrary to the spirit of the Code and is strongly to be deprecated. It is not, however, illegal but, the evidence of such a witness must ordinarily be of less value than that of a person who has been granted a valid pardon and is no longer under fear of a prosecution. A I R 1920 Nag 255 : 21 Cr L J 769, Overruled. (Grille, J. C., Niyogi and Pollock, A. J. Cs.) Amdu Miyan Guljar v. Emperor,

A I R 1937 Nag I7 = 9 R N 126=I L R (1937) Nag 315=166 I C 582 and 587=38 Cr L J 237 and 251 (FB).

——Ss. 170, 344 — Bail—Power of Magistrate to remand accused before completion of investigation.

Section 170, Criminal P. C., implies a case where the investigation is not complete but where there is reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate and even if the investigation is not complete and the report is not ready, the Magistrate may remand the accused to custody under S. 344, Criminal P. C., if he considers that there are reasonable grounds for doing so. (Kendall J.) Emperor v. Sooba,

A I R 1931 All 617 = 1931 A L J 617 = 53 A 729 = Ind Rul (1931) All 729 = 133 I C 617 = 32 Cr L J 1045 (2).

——Ss. 170, 155 (3) — Investigation under Chap. XIV, whether includes investigation under S. 155 (3).

The expression 'an investigation under this Chapter' in S. 170, Criminal P. C., includes an investigation held under S. 155 (3) under the orders of a Magistrate. (B. J. Dayal, J.) Raghubar Dayal Misra v. Emperor,

A I R 1931 All 263 = Ind Rul (1931) All 241=53 A 407=130 I C 193=32 Cr L J 465.

——No bar to police prosecution.

The mere fact that a private complaint is filed in a Court and the Magistrate takes cognizance of the private complaint does not and cannot deter the police from enquiring into the offences which have been committed and which come to their knowledge not from the complainant party but on information which they secure in the course of their duty from other persons. A charge-sheet then framed by the police is proper and the mere fact that there was a private complaint does not take away the rights of the police to conduct the prosecution. (Devadoss, J.) S. Vijayaraghava Chariar v. Emperor,

A I R 1928 Mad 1268=114 I C 365=1 Mad Cr C 341 =30 Cr L J 326.

——Free fight about possession of plot—Police must challan prosecution party also.

When there is a dispute as to the possession of the plot and a fight takes place with regard to that, it is the duty of the police to charge-sheet the prosecution party also for rioting. (Devadoss and Waller, JJ.) In re Jogali Bhuigo Naiks,

A I R 1927 Mad 97=97 I C 958=27 Cr L J 1198.

—S. 171.

——Investigating Officer should not be directed to himself produce the witnesses. (P. L. Bhargava, J.) State v. Madari Lal

1951 R D (H C) 41.

——Evidence of witnesses subjected to unnecessary restraint.

A failure to follow the provisions of the section may lead to an inference that the witnesses put up at the trial were not free agents. The fact that witnesses were subjected to unnecessary restraint lessens the evidential

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value of their statements at the trial. (Das C. J. and Harnam Singh J.) Ram Singh v. The Crown,

A I R 1950 Simla 178=52 Pun L R 248=ILR (1950) Punj 209=52 Cr L J 99.

——Breach of trust—Accused agent of firm in Cawnpore working in Calcutta — Money realized in Calcutta not remitted — Misappropriation or conversion not alleged—Cawnpore Court has jurisdiction to try the case. (Sulaiman, C. J. and Bennet, J.) Mohru Lal v. Emperor,

A I R 1936 All 193 = 1936 A L J 3 = 8 R A 595 = 58 A 644=1936 A W R 23=160 I C 356=37 Cr L J 284.

—S. 172.

See also Criminal P. C., S. 162.

SYNOPSIS

1. Admissibility in evidence.
2. Applicability and scope.
3. Contents of diary.
4. "Day by day."
5. Inspection by accused.
6. Refreshing memory.
7. Use of diary.

1. Admissibility in evidence.

——Prosecution for offence under S. 161 read with S. 116, Penal Code—Prosecution story altogether unnatural and illogical — Copies of statements of witnesses recorded by police during investigation not supplied even though requested by accused — Recovery of currency notes not mentioned in general diary — Accused given benefit of doubt—See Penal Code (45 of 1860), S. 161.

A I R 1950 Ajmer 44=51 Cr L J 1301.

——Identification report.

The mediator's report containing the record of the proceedings at the identification parade held by the Police in the course of investigation is wholly inadmissible in evidence. (Burn and Happell, JJ.) In re Kshatri Ram Singh,

A I R 1941 Mad 675=54 L W 69=1941 M W N 521 14 R M 299=196 I C 342=42 Cr L J 848.

——Evidence—Police Officers—Admissibility of their belief on certain matters—Admissibility of Police records as to suspected members of gang.

From their experience, Police Officers are liable to diagnose the nature of crime just as a doctor is able to diagnose a disease. So, their belief that a gang was operating is entitled to respect. Statements in Police records as to the suspected members of the gang, however, is an entirely different matter and such lists should not be included in the evidence. (Grille, J. C., Niyogi and Pollock, A. J. Cs.) Amdu Miyan v. Emperor,

A I R 1937 Nag 17=9 R N 132 = I L R (1937) Nag 315=166 I C 582 and 587=38 Cr L J 237 and 251 (FB).

——Use of police diaries.

In a criminal trial the Court should not make use of Police diaries. (Fforde and Addison, JJ.) Basant Singh v. Emperor,

A I R 1930 Lah 484=122 I C 568 = 31 P L R 185 = 1930 Cr C 596=31 Cr L J 442.

——Standing by themselves, the police proceedings are not substantive evidence in the case and cannot be used in order to test the correctness of the statements made by witnesses on oath before the Court. References by a Magistrate to police proceedings cannot be justified even under S. 172. A I R 1917 P C 25, Rel. on. (Shadi Lal, C. J. and Agha Haidar, J.) Emperor v. Ram Rang,

A I R 1928 Lah 820=109 I C 221 = 10 A I Cr R 230 =29 Cr L J 493.

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——Caution necessary—Foundation for questions to witnesses.

The entries in the police diary cannot be used as though they were evidence in the case to discredit the prosecution evidence. They can be used only to aid it in the inquiry or trial. The aid which a Court can receive from the entries in such a diary is usually confined to utilising the information given therein as a foundation for questions to be put to the witnesses, and, in using the diary, the Court should always employ very great caution. (Stuart, C. J. and Raza, J.) Rajaram v. King-Emperor.

A I R 1927 Oudh 64=3 O W N 1001 = 99 I C 342= 7 A I Cr R 52=28 Cr L J 134.

——Limits of.

To disbelieve the story of the defence only because it is nowhere mentioned in the Police Zimnis, amounts to making use of the Zimnis in such a way as to strengthen the case for the prosecution and to show that the rival story told by the defence is untrue—a course forbidden by the provisions of the Cr. P. Code. (Harrison and Fforde, JJ.) Devi v. Emperor,

A I R 1926 Lah 485=94 I C 140=27 Cr L J 572.

——The Court may also use the diaries in the course of the trial for the purpose of clearing up obscurities in the evidence or bringing out relevant facts which the Court thinks are material in the interests of a fair trial. If the statements in question, however, have not been made evidence in accordance with these statutory provisions, no Court has the right to refer to them subsequently for the purpose of coming to a judicial decision upon the case which is under trial or enquiry. (Shadilal, C. J., and Fforde J.) Mohammad v. Emperor.

AIR 1926 Lah 54=89 I C 232=26 Cr L J 1308.

——Not inadmissible.

Entries made in a personal diary kept by a police officer who not did start or carry on the investigation of a case do not fall within the purview of S. 172 and are not therefore inadmissible in evidence by virtue of the provisions of that section. (Greaves and Panton JJ.) Kalia v. Emperor.

AIR 1925 Cal 959=85 I C 723=26 Cr L J 579.

——List of stolen property—Map prepared by police.

A list of stolen property handed to a Police Officer in the course of investigation is not admissible in evidence and should not be placed before the jury. The admission of such a list however would not of itself vitiate the trial unless it is shown that the accused have been prejudiced by such admission. Where the names of certain persons are sent to the Police as being the names of those who are suspected of being concerned in the commission of an offence and the evidence of the person who supplied these names to the Police is challenged in Court, the list of names supplied by him is admissible in evidence to corroborate his statement. A map which contains upon it certain things which must have been supplied to the Police Officer by some person should not be admitted unless there had been the evidence of the person as to what he said to the officer and the evidence of the Police Officer as to what the person told him. (Greaves and Panton JJ.) Kalia v. Emperor.

AIR 1925 Cal 959=85 I C 723=26 Cr L J 579.

——S. 172 (2)—Police diaries cannot be used by Court as evidence.

Section 172 (2), Criminal P. C., authorises a criminal Court to send for the police diaries of a case under inquiry or trial in such Court, and to use such diaries, not as evidence in the case, but to aid it in such an enquiry or trial. Where the Sessions Court uses the Zimnis as evidence,

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is an improper use of them and the conviction cannot stand. (Scott-Smith and Abdul Qadir JJ.) Sundar Singh v. Emperor.

66 I C 187=23 Cr L J 251 (Lah)

——Police diary—Cannot be used as substantial evidence—Purpose of—Evidence of corroboration.

Police diary maintained under S. 172 of the Code cannot be used as substantial evidence in a case or to corroborate the evidence of the Police Officer who kept it, although it may be used to contradict him. An improper use of the diary by the Court by itself is not a ground on which the High Court will interfere. (Jwala Prasad J.) Achaibar Singh v. Emperor.

A I R 1921 Pat 331 = 2 P L T 223 = 61 I C 230=22 Cr L J 374.

——S. 172 (2) — Police diaries—Value of, as evidence.

A police diary recording the proceedings of the investigation officer may be used to assist the Court trying the case as suggesting means of further elucidating points which need clearing up, but not as evidence against the accused. The Police Officer who made the entry might be confronted with it but not any other witness. (Viscount Haldane) Dal Singh v. Emperor.

AIR 1917 P C 25=44 Cal 876=15 A L J 475=1 Pat L W 661=19 Bom L R 510=21 C W N 818=26 C L J 13=6 L W 71=22 M L T 31=(1917) M W N 522=33 M L J 555=11 Bur L T 54=13 N L R 100=39 I C 311 =44 I A 137=18 Cr L J 471 (P C).

——Entry in diary—Not used to refresh memory—Whether evidence.

A Magistrate should not refer to any entry in a diary which has not been used by prosecution witness to refresh his memory as corroboration of his evidence. But such error is not in itself sufficient to call for interference in revision when the Magistrate has convicted the accused after considering other evidence. (Sadasiva Aiyar J.) In re Kuttialikutte Marakar

A I R 1915 Mad 11 = 1 L W 229 = 23 I C 208= 15 Cr L J 256.

——Entries in police diaries, admissibility — See Penal Code (Act XLV of 1860), S. 411.

4 Cr L J 176 (Lah).

2. Applicability and scope.

——Ss. 172 and 367 — Failure to record statements of important witnesses.

The failure to record separately the statements of prosecution witnesses in the case diary who are the most important eye-witnesses in the case is a serious irregularity considerably prejudicing the accused and is by itself enough to make the evidence tainted. (Ramaswami J.) Narayanreddi v. State.

AIR 1952 Mad 821 = 65 Mad L W 238 = 1952 Mad W N 369=1952 Mad W N Cr 81=1952-2 Mad L J 7= 1953 Cr L J 29,

——Non-observance of rules of writing diaries — Statement of witness not coming in original form — See also ibid, S. 162.

AIR 1952 Vind Pra 7=1952 Cr L J 143.

——Writing case diary on loose sheets.

The writing of case diaries on loose sheets is to be disapproved. Bound books with alternatively numbered pages and arrangements for carbon copies are expected to be provided by the Police Department and these alone should be used by the Police Officers ; this automatically gives duplicate or triplicate copies, so that the loss of one copy is immaterial. If for any reason diaries have to be written on loose sheets of paper, they must be copied out verbatim

CRIMINAL P. C. (V of 1898), S. 172—2. Applicability and scope

in the proper case diary books, and the original also prescribed in the case diary to avoid future controversy. (Krishnan J. C.) Bhaiya Lal Singh v. State of Vindhya Pradesh.

AIR 1952 Vind Pra 7=1952 Cr L J 143.

——Notes taken by investigation officer under S. 161 (3) —Production of —Investigating officer would be justified in objecting to—See Criminal Procedure Code (5 of 1898), Section 161.

AIR 1948 Mad 23=48 Cr L J 973.

——S. 172 (1)—Contravention of section—Effect.

A contravention of S. 172, namely, the failure of the police officer to keep a diary, lays the evidence of the police officers open to adverse criticism and may diminish its value, but it does not have the effect of making that evidence inadmissible. (Lord Wright, Lord Du Parcq, Lord Normad, Sir Madhavan Nair and Sir John Beaumont) Zahiruddin v. Emperor.

AIR 1947 P C 75=1947 M W N 222=1947 O A P C 21 = 51 C W 555 = 1947 A W R P C 21= 1947 A L J 379=49 Bom L R 521=74 I A 80=231 I C 86= 13 B R 542=60 M L W 524=48 Cr L J 679 (PC).

——Though the Police have departmental instructions to record statements in investigation, they are not bound by law to do so. (Digby, J.) Narayan Punjaram v. Shankar Singh.

AIR 1944 Nag 318 = 1944 N L J 403 = 217 Ind Cas 142=ILR (1945) Nag 486=46 Cr L J 195.

——Ss. 172, 162 — Statement under S. 172, whether includes statement covered by S. 162.

The word "statement" must not be treated as including statements of a witness to the Police, which since S. 162, Criminal P. C., was amended in 1923, are governed by that section, and the Police Officers ought not to include such statements in the Police diaries. (Page C. J., Mya Bu, Baguley, Sen and Mosely JJ.), Emperor v. Nga Lun Thauung

AIR 1935 Rang 370=13 Rang 570=8 R Rang 202 = 158 I C 784 =36 Cr L J 1487 (FB).

——Ss. 162 and 172 do not apply to Calcutta Police. (Suhrawardy J.) Panchanan Mukherjee v. Emperor.

AIR 1929 Cal 257=116 I C 160=33 C W N 203=12 A I Cr R. 448=30 Cr L J 577.

——Not covered.

Section 172 does not apply in any way to the statements of persons and certainly does not override the provisions of the Evidence Act. (Harrison and Dalip Singh JJ.) Hazara Singh v. Emperor.

AIR 1928 Lah 257=9 Lah 389=9 A I Cr R 559=108 I C 167=29 Cr L J 348.

——What is intended to be recorded under S. 172 is what the Police Officer did, the places where he went, the people he visited, what he saw, etc., and no statement can be recorded under this section and therefore it would not be a privileged one. (Cuming and Graham JJ.) Mofizoddi v. Emperor.

AIR 1927 Cal 644=45 C L J 561= 31 C W N 940 = 104 I C 245=28 Cr L J 805.

——The object of sub-section 2 is to enable the Court to direct the police officer who is giving his evidence, to refesh his memory from the notes made by him in the course of the investigation of the case, or to question him as to contradictions which may appear between statements so recorded and the evidence he is giving in Court. If used for the latter purpose, the provisions of Ss. 145 and 161 of the Evidence Act shall apply. (Shadi Lal C. J. and Fforde J.) Mohammad v. Emperor.

AIR 1926 Lah 54=89 I C 252=26 Cr L J 1308.

CRIMINAL P. C. (V of 1898), S. 172—2. Applicability and scope

——Calcutta police.

Where a diary is prepared under S. 47 (a) of the Calcutta Suburban Police Act no privilege attaches to it and S. 172 has no application and therefore the accused person would be entitled to use those statements recorded by the police officer of witnesses who have been examined in the case, to contradict those witnesses who had given evidence before the Magistrate under S. 145 of the Evidence Act. It is immaterial in a criminal case on whose behalf it is put in. (Ghose and Cuming JJ.) Suresh Chandra Ghose v. Emperor

AIR 1924 Cal 442=74 I C 261=24 Cr L J 757.

——Police diary—Object of.

The object of police diary is to enable the Court to use the information recorded from day to day and the lines of investigation of a particular case : 19 A 390, Rel. on (Fletcher J.) Peary Mohandas v. Weston

16 C W N 145=13 I C 721=13 Cr L J 65.

——Oral statement recorded in diary under S. 172— Use of—See ibid, S. 162

4 Cr L J 79 (Cal).

3. Contents of diary.

——Compilation of diary—Procedure.

Per Bell J.—Under S. 172, there is a general direction that the investigating police officer must compile a diary day by day. Whether he does so from memory or by means of notes taken down by him is not provided and the circumstances of each case must be considered if and when the conduct of the police in conducting an investigation is questioned. To expect the police officer to compile his case diary from memory is absurd and might in certain circumstances be most undesirable. (Horwill and Bell JJ.) Subba Reddi v. Emperor

AIR 1948 Mad 23 = 1947-1 M L J 193 = 60 M L W 179 = 1947 M W N 209 = I L R (1948) Mad 57 = 48 Cr L J 973.

——Omission to enter in the special diary prescribed by S. 172, Criminal P. C., the various steps taken in a police inquiry does not vitiate the trial. (Courtney Terrell C. J. and Adami J.) Hafiz Mohammad v. Emperor

AIR 1931 Pat 150 = 12 P L T 393 = 131 I C 17 = 32 Cr L J 638.

——Police recording evidence in investigation must attach papers to diary.

The paper upon which the statement of a person examined by a police officer in investigation is written should be attached to the police diary proper which should contain a narrative of events. (Kotwal and Prideaux, A. J. C.) Laxman Nomdeo v. Emperor

AIR 1924 Nag 33=76 I C 237=25 Cr L J 141.

4. "Day by day."

——Case diary—How to be kept—Compliance with provisions of S. 172—Necessity of.

Statements attached to the police diaries and the number of their pages should also be noted and signed by the Superintendent of Police. The provisions of S. 172, Criminal P. C., apply to all police officers making an investigation. The police officers are required to enter proceedings in a diary from day to day. This important part of the law should be followed. It is not enough if a general case diary is kept. It should be accurately kept and the provisions of S. 172 should be complied with.

[The general tendency to be mechanical in the performance of the duties imposed on them in connection with an investigation, and a tendency to make statements in evidence from which frequently a Magistrate was com-

CRIMINAL P. C. (V of 1898), S. 172 — 4. "Day by day"

pelled to resile deprecated.] (Dalip Singh and Currie JJ.) Jahangiri Lal v. Emperor

AIR 1935 Lah 230 = 7 R L 58 = 150 I C 1056 = 35 Cr L J 1180.

——Omission to record in case diary on same day on which examination is made—No explanation for delay—Circumstance suspicious.

A Sub-Inspector omitted to record in his case diary on the same day on which examination was made. No explanatian was given for such delay and the fact that the examination was conducted on the previous day was concealed :

Held, that it must be regarded as a very suspicious circumstance. (Grille J. C. and Pollock A. J. C.) Local Govt. v. Mt. Guji

AIR 1935 Nag 69=17 N L J 189.

5. Inspection by accused

——S. 172 (2) — Defending counsel is not entitled as of right to see case diary of police — But there is no prohibition against the Court permitting in its discretion defending counsel to see portions thereof, which the Court considers that in the interest of justice, he should see and use in the defence of the case — The appropriate Court is the committing Court and not the Sessions — (Case held fit one when the committing Court should have shown such portions to the defence counsel, to verify what the accused told the police as recorded there before formulating his defence). (Mack and Basheer Ahmed Sayeed JJ.) Molagan, In re

AIR 1953 Mad 179=1952-2 Mad L J 186=1952 Mad W N 608=1952 Mad W N Cr 180 = I L R (1953) Mad 284=1953 Cr L J 424.

——Ss. 172, 162 — Prosecution for offence under S. 161 read with S. 116, Penal Code — Prosecution story altogether unnatural and illogical — Copies of statements of witnesses recorded by police during investigation not supplied even though requested by accused—Recovery of currency notes not mentioned in general diary—Accused given benefit of doubt and acquitted. (Atma Charan J. C.) Balu v. Rex

AIR 1950 Ajmer 44=51 Cr L J 1301.

——Ss. 172, 161 — Record of statement heard by police officer in exercise of power under S. 161 and recorded in diary, whether evidence — Such record, if a public document.

Section 172, Criminal P. C., does not forbid a recorded statement to be used at a trial for an offence not under investigation when it was made. The record of a statement heard by a police officer in exercise of the powers conferred by S. 161 of the Procedure Code and recorded either in the diary or separately in the course of investigation proceeding is an unpublished official record relating to an affair of State, evidence derived from which cannot be produced in a case to which the first proviso to S. 62 .is not applicable except with the permission of the officer at the head of the Police Department (S. 123, Evidence Act). By itself, the record of the statement will prove nothing. It cannot, in any sense, be termed a deposition and it is not evidence. It is not a public document, a copy of which must be given on demand under the provision of S. 76, Evidence Act. But the fact or allegation that the statement has been reduced to writing will not preclude evidence of its having been made (subject, of course, to the provisions of the Evidence Act), for S. 91, Evidence Act, does not apply. To prove that the statement was made, it would be necessary to call the police officer who heard it. If the accused has succeeded in having the original record of the statement produced, notwithstanding objections raised under Ss. 123,

CRIMINAL P. C. (V of 1898), S. 172 — 5. Inspection by accused

124 or 125, Evidence Act, and the police officer has referred to it to refresh his memory under S. 159, the provision of S. 145 of that Act will apply. (Coldstream J.) Baij Nath Bhatnagar v. Muhammad Din

AIR 1937 Lah 359 = 17 L 472 = 38 P L R 1040 = 9 R L 389=166 I C 501=38 Cr L J 246.

——Roznamcha of police station, if public document.

Roznamcha of police station is not a public document, the entries in the roznamcha do not constitute a verbatim report, and in the case of offences which are non-cognizable, the summary of the report is usually reduced to a minimum. (Grille J. C) Ajodhia Prasad v. Tara Bai

163 I C 382=18 N L J 333=9 R N 3.

——Ss. 172, 162—Copy of statement to accused—Court's power to refer to special police diary.

The power of the Criminal Court to use the special diary is not limited to the use of it for the purpose of enabling the police officer who made it to refresh his memory or for the purpose of contradicting him. The Court may also use the special diary not as evidence of any date, fact or statement referred to in it, but as containing indications of sources and lines of inquiry, and as suggesting the names of persons whose evidence may be material for the purpose of doing justice between the Crown and the accused. It is the Court which is entitled to use the special diary. Neither the accused nor his agent is entitled under S. 172, Criminal P. C., to see the special diary for any purpose unless it has been used by the Court for enabling the police officers who made it to refresh his memory or for the purpose of contradicting him. (Page C. J., Mya Bu, Baguley, Sen and Mosely JJ.) Emperor v. Nga Lun Thaung

AIR 1935 Rang 370 = 13 R 570 = 8 R Rang 202 = 158 I C 784=36 Cr L J 1487 (FB).

——Ss. 162, 172 — Police diaries — Accused's right to inspect — Order permitting defence to inspect all police diaries relating to an enquiry.

Under Ss. 162 and 172, Criminal P. C., if at any time the Court itself, on inspection of the police diaries considers that certain sources of enquiry are revealed by those diaries or that a certain police officer should disclose further to the Court the steps taken by him or if it becomes necessary to contradict the said police officer, the Court may use the diaries for the purpose but until the Court has done so, the defence are not entitled to inspect those diaries.

It is, therefore, improper to make a general order permitting the defence to inspect all the police diaries relating to a particular inquiry. (Dalip Singh and Monroe JJ.) Emperor v. Dharam Vir

AIR 1933 Lah 498 = Ind Rul (1933) Lah 283 = 34 P L R 541=142 I C 854=34 Cr L J 464.

The Magistrate called for the diary after receiving a written statement from the police that there was no statement recorded under S. 162, Criminal P. C.

Held, that if the diary was one of the kind described in S. 172 neither the accused nor his agents were entitled to call for them or to see them unless and until they were used by the police or by the Court for the purposes described in the section. (Foster J.) Rabindra Nath v. Emperor

AIR 1925 Pat 339=84 I C 441=26 Cr L J 297.

——Disallowing application for inspection of diary.

There is nothing in the law which entitles the defence to an inspection of anything more than that portion of the police diary from which the witness refreshed his memory and there is no illegality or irregularity in the procedure of the Magistrate who disallows the application

CRIMINAL P. C. (V of 1898), S. 172 — 5. Inspection by accused

for the inspection of the whole diary. (Coutts and Das JJ.) Lachmi Singh v. Emperor

AIR 1922 Pat 562 (1)=68 I C 623=2 Pat 74=3 Pat L T 562=23 Cr L J 591.

6. Refreshing memory.

——Ss. 172, 174 — Police Officer suffering from lapse of memory as to presence of blood stains or injuries — Court inviting him to refresh his memory by reference to memorandum prepared by him in course of investigation —Police Officer's failure to do so —Consequences stated.

It is true that the accused is not entitled to call for Police diaries unless a police Officer uses them to refresh his memory, or the Court uses them for the purpose of contradicting a witness. But it is not open to a witness to decide whether or not he should disclose a material fact which might turn the scale in deciding whether an accused person was guilty or innocent, when he is in a position to clear up a point by reference to any notes taken by him during the course of investigation. If a Police Officer figuring as prosecution witness suffers from a lapse of a memory, which can be remedied by reference to any memorandum prepared by him at the time, and the Court invites him to refresh his memory with reference to the writing, the witness is under an obvious obligation to do so, this being part of the duty under which he lies to lay the whole truth before the Court to the best of his ability. Should the Police Officer refuse to assist the Court in this way, he would not only be failing in his duty both as a witness and as an officer of public justice, but would also be liable to exactly the same penalty as any other witness who refuses to give evidence which is within his knowledge and is not affected by any particular claim of privilege. It is possible that a diary of steps taken by the Police in course of investigation may contain confidential matters which could not, in the public interest, be disclosed and for which privilege might be claimed, but no such question can arise when it is merely a question of the presence of bloodstains or injuries, which are matters of common knowledge in the case, and it is only desired to secure the best possible evidence on the point. Nor is there anything in the wording of S. 174, Criminal P. C., which suggests that it was ever intended that information on any such point should be deliberately withheld if it should happen to be in any way necessary for the decision of the case. (Young C. J. and Beckett J.) Fatnaya Lal Khan v. Emperor,

A I R 1942 Lah 89 = 43 P L R 680 = I L R (1942) Lah 470=14 R L 438=199 I C 870=43 Cr L J 588.

——Right of accused.

Accused cannot insist upon a Police witness referring to his diary to refresh his memory. The contents of the Police diary cannot be used except strictly in accordance with Ss. 162 and 172, Criminal P. C. (Coldstream and Jai Lal JJ.) Mohinder Singh v. Emperor,

A I R 1932 Lah 103 = Ind Rul (1932) Lah 81 = 33 P L R 891=135 I C 209=33 Cr L J 97.

——Powers of Court to compel witness.

Court cannot compel a witness, e. g., the investigating officer, to refer to the diary: 8 Cal. 154, Foll. (Findlay O. J. C.) Shaik Dilwar v. Emperor,

95 I C 277=27 Cr L J 757 (Nag.)

——It may be within the right of the police officers not to refer to a diary, but the accused is entitled to the benefit of their refusal to refer to the diary and to disclose the source of their information. (Jwala Prasad J.) Deodhari Pandey v. Emperor,

A I R 1925 Pat 131=86 I C 274 = 1925 P H C C 6 = 26 Cr L J 738.

CRIMINAL P. C. (V of 1898), S. 172 — 6. Refreshing memory

——When a Sub-Inspector does not remember what witnesses stated at the investigation and refuses to refresh his memory from the diaries, the Court should compel him to look into the diaries for the purpose of answering the question. (Adami J.) Mohiuddin Khan v. King-Emperor,

A I R 1924 Pat 829=2 Pat L R Cr 202.

——Refreshing memory — Police Officer whether can refresh his memory by record of statments of witnesses taken under S. 162—See ibid, S. 162,

11 Cr L J 117 (Oudh).

7. Use of diary.

——Ss. 172 and 561A—Use of Police diary.

Application under S. 561A for quashing proceedings of lower Court made at early stage of proceeding. High Court is entitled to look into police diaries for determining whether any case has been made out or not. In order to determine correctness of affidavits on record it is necessary to look into them. (Kapur J.) S. P. Jaiswal v. State,

A I R 1953 Punj 149 = 1953 All W R (Sup) 33 =55 Punj L R 77=1953 Cr L J 1018.

——Use of police diary—Admissibility in evidence.

Section 172 (2), Criminal P. C. strictly forbids the use of the entries in police diaries as a piece of evidence. The diary can be used to enable the police officer to refresh his memory or it might be used for the purpose of contradicting him. These are warranted by the section itself. It is a privilege attaching to this document and such privilege cannot be dispensed with. The prohibition to its use by the accused or by the Court excepting for the restricted purposes has been imposed on grounds of sound public policy and the Court cannot deviate from it. The entries by themselves cannot be taken as evidence, but there is nothing to prevent such entries being looked into for the elucidation of points which need clearing up. (Shrinivasachari J.) Abdul Munim Khan v. State of Hyderabad,

A I R 1953 Hyd 145 = I L R (1951) Hyd 895 = 1953 Cr L J 785.

——Use of police diary as evidence—Legality.

The Court when it considers any fact, date, statement or other matters mentioned in police diary is or may be relevant, must have them established by legal evidence. It cannot legally accept the diary as evidence in any sense to establish them. (Chowdhry J. C.) Ranjit Singh v. State,

A I R 1952 Him Pra 81=1952 Cr L J 1720.

——Immediately after crime accused going to Police Station and confessing — Statement also forming first information of offence— Statement can be used in favour of accused— Case diaries, use of — See Evidence Act (1872), S. 25

A I R 1952 Mad 586=1952 Cr L J 1240.

——Case diary—Use of.

The case diary cannot certainly take the place of evidence. But the evidence recorded can be much better understood in the light of materials available therein. (Ray C. J. on difference between Das and Panigrahi JJ.) Khetri Bewa v. State,

A I R 1952 Orissa 37=17 Cut L T 220.

——S. 172 (2) —Duty of Public Prosecutor and Presiding Officer, explained—Criminal P. C. (1898), S. 162.

It is the duty of a Public Prosecutor or any other official who may be conducting the prosecution to prosecute and not to prosecute. It should also not be forgotten by the presiding officer at a criminal trial that he owes a responsibility not only to the accused but also to the State to see that justice is done. Under S. 172 (2), the Criminal Court is entitled, and is in fact bound in the

CRIMINAL P. C. (V of 1898), S. 172 — 7. Use of diary

interest of justice, to check the testimony of the investigating officer and contradict him if necessary by the use of the police diary. 13 Rang 570, Ref. (E Maung J.) Ah Tu alias Kyaud Nyun v. The King,

1947 Rang L R 405.

——Mode in which Police diary may be used.

Per Khundkar J. — A diary kept under S. 172 cannot be used as evidence of any date, fact or statement contained therein. It can be used for elucidation of dubious points so that justice can be done. (Khundkar and Sen JJ.) Ahmad Mia v. Emperor,

A I R 1944 Cal 243=I L R (1944) 1 Cal 133=17 R C 92=215 I C 153=46 Cr L J 28.

——Ss. 172 and 162—Diary in counter case.

Though S. 172 does not in terms apply to Police diaries in counter case, but the principles set out in the section do apply. Court can, therefore, look into the diary of the counter case. (Khundkar and Sen JJ.) Ahmad Mia v. Emperor,

A I R 1944 Cal 243=17 R C 92 = I L R (1944) 1 Cal 133=215 I C 153=46 Cr L J 28.

——Police diary — Accused if entitled to prove them through witness producing them.

The accused are entitled to prove documents (General Police diary) which are admissible in evidence through the witness producing them. (Lakshamana Rao J.) In re, Soundararaja Ayyangar,

A I R 1942 Mad 38=1941 M W N 789=14 R M 372 =196 I C 882=43 Cr L J 163.

——Police diary—Use of.

The only legitimate purpose for which the Police diary may be used is to assist the Court which tried the case by suggesting means of further elucidating points which need clearing up, and which are material for the purpose of doing justice between the Crown and the accused, but not as containing entries which can, by themselves be taken to be evidence of any date, fact or statement contained in the diary. (Manohar Lall and Meredith JJ.) Dikson Mali v. Emperor,

A I R 1942 Pat 90 = 8 B R 49 = 23 P L T 387 = 14 R P 232=196 I C 597=43 Cr L J 36.

——Police Officer recording joint statements — They cannot be used against any particular witness.

Where the Police Officer recorded in his Police diary the statements of 2 or 3 persons jointly at one place, these joint statements cannot be legally used as statements of any particular prosecution witness for the purpose of contradicting that witness, for the simple reason that it is not known how much of any particular joint statement was the individual statement of any particular prosecution witness and how much was not his individual statement. (Nanavutty and Zia-Ul-Hasan JJ.) Emperor v. Salik,

A I R 1937 Oudh 201=9 R O 295 = 1937 O W N 63 =166 I C 259=38 Cr L J 165.

——Use of Police diary—Evidence Act (1 of 1872), S. 145 — Previous statement by witness —Use of, for contradicting him — His attention must be called to parts which are to be used — Statements cannot be used without giving opportunity to witnesses of either denying or admitting them.

Under S. 145 of the Evidence Act, a witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used,

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for the purpose of contradicting him. Where the Judge has asked the investigating Police Officer to verify as true the copies of the statements recorded by him in the special Police diary and he has bodily used these statements for the purpose of contradicting the statements made on oath by the prosecution witnesses without first giving each prosecution witness an opporunity of admitting or denying the correctness of the statement recorded by the investigating Police Officer in the special Police diary of the case, the procedure is entirely illegal and all these true copies of statements recorded by the Police Officer in his diary and exhibited in this case are entirely inadmissible in evidence.

The proper procedure in such a case when witness is sought to be discredited by the defence by having him contradicted by his previous statement made before the Police is to read out that particular portion of the witness's previous statement made to the Police which is in direct contravention of what he has deposed in Court and then to ask him whether he sticks to his former statement as recorded by the Police or whether he sticks to his statement as made on oath in Court, and only that portion of his statement as recorded by the Police which has been read to the witness should be exhibited in the trial of the case. (Nanavutty and Zia-Ul-Hasan JJ.) Emperor v. Salik,

A I R 1937 Oudh 201=9 R O 295 = 1937 O W N 63 =166 I C 259=38 Cr L J 165.

——Under S. 172, Criminal P. C., any Criminal Court may use the Police diary to aid it in the trial. (Moseley and Ba U JJ.) Nga San Ba v. Emperor,

AIR 1936 Rang 75=8 R Rang 449=161 I C 14 = 37 Cr L J 414.

——Ss. 172, 162 — Prosecutor, whether bound to advice accused to request Court to refer to statements—Court's duty.

There is no legal obligation imposed upon either the Public Prosecutor or the Court to advise the accused to request the Court to refer to the statement of any witness to the Police under S. 162, Criminal P. C., but it is the duty of the Public Prosecutor and any other official who may be conducting a prosecution to prosecute, not to prosecute the accused, and a responsibility rests upon him not to allow the Court or jury to place reliance unwittingly upon the evidence of a witness who, to his knowledge, made a contradictory statement to the Police in the course of the preliminary investigation, and in such circumstances, he ought to inform the Court that it might be expedient that the accused should be made aware that he would be entitled to be supplied with a copy of the witness's statement to the Police if he made a request to the Court in that behalf. Further, there is nothing in S. 162 which prevents the Court, if in its discretion it elects to do so, from informing the accused of his right, for the purpose of contradicting the evidence of the witness, to request the Court to refer to the previous statement of the witness to the Police, and to supply the accused with a copy thereof as provided in the section; or, if the accused makes a request to the Court in that behalf, to prevent the Court from pointing out to the accused, if it chooses to do so, any passages in the statement which may appear to be material for the purpose in hand. On the other hand, merely because the Court thinks it well to inform the accused of his rights under the section, it does not follow that it would be prudent for the accused in every case to ask for a copy of the statement; and it is for the accused, and not for the Court, to decide whether the accused should exercise the right given to him under S. 162, Criminal P. C. (Page C. J., Mya Bu,

CRIMINAL P. C. (V of 1898), S. 172—7. Use of diary

Baguley, Sen and Moseley, JJ.) Emperor v. Nga Lun Thaung,

AIR 1935 Rang 370=13 R 570=8 R Rang 202 = 158 I C 784=36 Cr L J 1487 (FB).

——After verdict.

If the Judge could refer to the diaries before the verdict of the jury he could obviously refer to them after the verdict as the trial does not end with the verdict. (Cuming and Lort-Williams JJ.) Rebati Mohan v. Emperor,

A I R 1929 Cal 57=32 C W N 945=56 Cal 150 = 115 I C 258=12 A I Cr R 265=30 Cr L J 435.

——The power under S. 172, Criminal P. C., to look into case diaries should be sparingly exercised. (Beasely C. J. and Cornish J.) Kumaraswami Asari v. Emperor,

1929 M W N 587.

——Police diary may be used for accused.

Statements embodied in police diaries can be used in favour of an accused person but not against him. (Zafar Ali J.) Rajendar Singh v. Emperor,

AIR 1923 Lah 516=77 I C 489 : 25 Cr L J 409.

——Police diaries—Use of by Court.

A Criminal Court cannot use the facts and statements written in the police diaries as material to help to come to a finding on the evidence in the case. Doing that is really using police diaries as evidence. What the Court should do with the Police diaries is to discover, out of them, any matter of importance bearing upon the case and then call for the necessary evidence to have that matter properly proved in evidence in legal shape. (Pargiter and Woodroffe JJ.) Syed Abdul Rahim v. Salhu Kherwar,

10 C W N 600=3 Cr L J 408.

—S. 173.

SYNOPSIS

1. Applicability and scope.
2. "As soon as it is completed."
3. Discharge of accused.
4. How the report can be used.
5. "Investigation under this chapter"
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7. "Officer in charge of the police-station shall."
8. Penalty for submitting false report.
9. Report to whom to be sent.
10. Right of accused to copy of report.
11. What the report should contain.

1. Applicability and scope.

——Ss. 173 and 537—Practice of submitting incomplete chalans is against law.

The practice of submitting a number of incomplete chalans before a complete chalan is forwarded to the Magistrate concerned and the Magistrate commencing the inquiry or trial on foot of the incomplete chalans and recording prosecution evidence piecemeal as names of witnesses are disclosed in instalments in the various incomplete chalans, is against law, for S. 173 contemplates the submission of only one police report and that when the investigation is completed. The practice also necessarily prejudices the accused in their trial. (Chowdhry J. C.) Kripa v. The State,

AIR 1952 Him Pra 68=1952 Cr L J 1495.

——Procedure—Challan for several offences whether can be rejected or amended.

Ordinarily, there should be a separate challan for each case; but there is no provision of law which requires that in cases where it is not so done the challan should be thrown out or returned for amendment. Nor can the police withdraw the challan filed and file separate challans. (Manohar Pershad and Mohammad Ahmed Ansari JJ.) Pannalal v. Hyderabad State,

CRIMINAL P. C. (V of 1898), S. 173—1. Applicability and scope

AIR 1951 Hyd 113=ILR (1951) Hyd 352=52 Cr L J 1376.

——Final report by investigating officer submitted to superior officer — Superior officer directing station officer to make further investigation — There is no illegality—Charge sheet submitted as a result of further investigation—No illegality. (Desai J.) Mangal Singh v. Rex,

AIR 1949 All 599=50 Cr L J 923.

——False complaint to Police of offence under S. 392, I. P. C.—Police Officer reporting it to Magistrate under S. 173, Criminal P. C. — Subsequently under orders of superior officer he filing complaint under S. 211, I. P. C.—S. 195 (1) (b) was no bar to prosecution of case—See Criminal Procedure Code (5 of 1898), S. 195.

AIR 1948 Nag 244=49 Cr L J 326.

——Final charge-sheet — Information received by police officer against several persons — No charge laid against one of them in final charge sheet—Further charge sheet can be filed against such person.

A police officer, who has filed what is styled as a "final charge sheet" in which he has not laid a charge against one of several persons against whom information was received by him at the earliest stage of investigation, can file a further charge sheet against that person without disclosing that he had received any further information. (Kuppuswami Aiyar J.) In re Palaniswami Goundan,

A I R 1946 Mad 502=ILR (1946) Mad 816=226 I C 582=47 Cr L J 993.

——There is nothing to prevent the prosecution from amending the charge-sheet before enquiry of the case. Hence filing of preliminary charge-sheet before the completion of investigation and filing of the original charge-sheet is quite legal. (Burn & Wadsworth JJ.) Wadood Sahib v. Emperor,

1935 M W N 1039.

——Ss. 173, 190 (b), 200—Report of Police — Legality of Magistrate's proceedings.

The Magistrate receiving a Police report under S. 173, can take cognizance under S. 190 (b), but he should not make over the case for inquiry and report under S. 200. After the report of the Police and the Magistrate, the accused ought not to be summoned to prove facts contained in the report. (Imam and Chapman JJ.) Abdullah Mah Mandal v. Emperor,

40 Cal 854=17 C W N 1004=19 I C 953=14 Cr L J 297.

——Power of Magistrate to order prosecution of person not arrested by police — See Criminal P. C. Ss. 169, 173, 190.

7 Cr L J 414 (Low Bur).

2. "As soon as it is completed".

——Delay by Police in preparing report of occurrence — Effect of.

The delay of 11 days by the Police in preparing the report of the occurrence is not in itself a reason for discrediting the evidence against any accused. (Varma and Beevor JJ.) Dukhan Das v. Emperor,

AIR 1944 Pat 211=23 Pat 139=11 B R 108=17 R P 134=216 I C 142=46 Cr L J 129.

——Ss. 173, 169 — Final report — When to be sent by investigating officer — S. 169, whether excuses delay in sending final report.

Under S. 173, Criminal P. C., as soon as the investigation is completed, the investigating officer is to send a report to the Magistrate. A Sub-Inspector is not justified

CRIMINAL P. C. (V of 1898), S. 173 — 2. "As soon as it is completed"

in delaying his final report on a charge of dacoity until proceedings under S. 202 before the Magistrate have terminated. Section 169 does not excuse his action as the section is employed only when the case is at the stage of investigation by the Police. (Thom and Bennet JJ.) Rahat Husain v. Emperor,

A I R 1933 All 582=6 R A 370=146 I C 896=35 Cr L J 208.

3. Discharge of accused.

——S. 173 (3) — Provision relates exclusively to cases provided by S. 169 — Magistrate taking cognizance of case on police report showing that accused had committed offence — Order of discharge of accused cannot be passed under S. 173 (3)—Only course open to prosecution is to move under S. 494. (Din Mohammad and Cornelius JJ.) Mohd. Niwaz v. Emperor,

231 I C 354 (Lah).

4. How the report can be used.

——Conviction based on—Validity of.

No Magistrate trying a case is supposed to draw material for a conviction from the report of a Sub-Inspector when that Sub-Inspector has not in fact been examined in Court. (Foster J.) Jai Singh v. King-Emperor,

AIR 1927 Pat 37=97 I C 424 = 7 A I Cr R 136=27 Cr L J 112.

——Duty of prosecution—Police—Duty of Courts—Functions of.

It is not the duty of the police to investigate which of two mutually destructive stories is the correct one. The Court must decide which of two parties is the guilty one. (Reid C. J. and Rattigan J.) Emperor v. Chanda Singh.

43 P W R 1912 (Cr) = 2 P R 1913 Cr=17 I C 49=7 P L R 1913=13 Cr L J 737.

5. "Investigation under this chapter."

——Ss. 173 and 537—Offence non-cognizable—Complaint instead of charge-sheet filed—Irregularity not material.

The police after making investigation of a non-cognizable offence filed a complaint to the Magistrate instead of submitting the charge-sheet.

Held, that although the course followed by the police was irregular, there was no material irregularity : 17 Bom L R 69, Dist. (Curgenven J.) Ponnuswami Udayar v. Emperor,

AIR 1929 Mad 115=115 I C 481=28 M L W 769 = 2 M Cr C 39=12 A I Cr R 299=30 Cr L J 469.

6. Nature of order striking oft case.

——Ss. 173, 190, 202 — Magistrate's refusal to accept recommendation of police under S. 173—Power of Magistrate to call upon complainant to produce evidence.

Section 173 deals with the final report of the Police and it can either amount to a charge or it may contain the recommendation that no offence having been made out the case should be cancelled. If the report is that an offence had been committed the Magistrate can take cognizance of it under S. 190 (1) (b). If, on the other hand, the report is that the case is false, clause (1) (b) of S. 190 does not apply and no cognizance of the offence can be taken by the Magistrate. The Magistrate has every right to look into the Police Diaries, to carefully scrutinise the investigation and to make up his mind independently of what the Police has said, as to whether the recommendation made by them is well founded. This means that it is open to the Magistrate to accept the Police recommendation or not. If he accepts it, he is to cancel the case, but if he does not, all that he can do is to make a note that he does not agree with the police and does not accept their recommendation. Before making an order the Magistrate, if he so desires, may hear the complainant but he cannot call upon him to produce any evidence or to record evidence that may be produced before him either by the complainant or the alleged offender. The Magistrate's order that the offence be cancelled or his refusal to accept the Police recommendation cannot prejudice either party for the simple reason that the order is not judicial and the aggrieved party can always agitate the matter further. If the aggrieved party be the complainant he can put in a complaint in Court and the Magistrate after having taken cognizance of it can record preliminary evidence under S. 202 but S. 202 has no applicability in the case of a Police report. (Teja Singh C. J. and Passey J.) Harbir Singh v. State,

AIR 1952 Pepsu 29 = 3 Pepsu L R 184 = 1952 Cr L J 482.

——Ss. 173, 245 and 403 — The discharge of an accused without trial on the recommendation of the investigation officer is not a discharge. Nor is it an acquittal under S. 245 so as to bar the issue of warrant of his arrest for the same crime. (Kayani J.) Sardara v. Muhammad Niwaz,

AIR 1950 Lah 40=Pak Cas 1950 Lah 127=Pak L R (1949) Lah 872=51 Cr L J 434.

——Order on Police report that case be struck off — Accused, if entitled to copy of such order.

An order of a Magistrate on a Police report under S. 173, Criminal P. C., that a case be struck off is an administrative order and not a judicial order and the accused is not entitled to a copy of such an order. (Blacker J.) Brahm Dev v. Emperor,

AIR 1938 Lah 469=40 P L R 239 = 11 R L 1 (1)= 175 I C 850=39 Cr L J 646.

——Ss. 173, 190 (1) (c) — Order to strike off case reported by Police — Case, if can be re-opened — Autrefois acquit, principle of—Whether applies.

An order passed by a Magistrate directing a case reported to him by the Police under S. 173, Criminal P. C., to be struck off, is not a judicial order and it is open to the Magistrate to re-open the case by calling for a charge-sheet. Such an order is purely administrative or ministerial and the principle of 'autrefois acquit' cannot possibly apply to the order. (Courtney-Terrell C. J. and Scroope J.) Uma Singh v. Emperor,

AIR 1933 Pat 242 = 14 P L T 162 = 12 Pat 234=6 R P 237=146 I C 70=34 Cr L J 1198.

7. "Officer in charge of the police-station shall."

——Railway Police are governed by Cr. P. C. unless specially prohibited.

The railway police, if they have completed an investigation before the time mentioned in the proviso to sub-r. 1 to R. 26 under S. 84, Railways Act, are not impliedly prohibited from exercising the ordinary powers which the officer in charge of a police station has of making a report as to the result of his investigation under S. 173, Cr. P. Code. The provisions of the Criminal Procedure Code apply, unless there is anything in any enactment for the time being in force regulating the manner of investigating offences connected with railway accidents to the contrary. There is nothing that clearly frustrates the authority of the police officer mentioned in S. 173, Cr. P. Code, who has completed his investigation at the time an enquiry under R. 20 is commenced or ordered. (Fawcett and Mirza JJ.) Shivbhat Manjunathbhat v. Emperor,

AIR 1928 Bom 162=109 I C 487=10 A I Cr R 308= 52 Bom 238=30 Bom L R 392=29 Cr L J 551.

CRIMINAL P. C. (V of 1898), S. 173

8. Penalty for submitting false report.

——Complaint to police—Report forwarded to Magistrate under S. 173—Order passed by Magistrate is judicial and not merely administrative — If the complaint is held to be false, the Magistrate is required to file a complaint in respect of offence under S. 211, Penal Code—See ibid, S. 195 (1) (b),

AIR 1952 Sau 67=1952 Cr L J 1084.

——Cancellation of report of offence by Magistrate under S. 173 on police recommendation after investigation—Police can start proceedings against maker of report under S. 211, Penal Code, for making a false charge. (Teja Singh, Mohammad Sharif and Abdur Rahman JJ.) Emperor v. Hayat Fateh Din,

AIR 1948 Lah 184 = I L R (1947) Lah 645 = 49 Cr L J 531 (FB).

9. Report to whom to be sent.

——Complainant dissatisfied with police investigation filing complaint—Magistrate should dispose it in accordance with Ch. 16 — Order directing police to charge-sheet without directing preliminary inquiry or issuing summons to accused is illegal—See ibid, S. 190,

AIR 1953 Assam 112=1953 Cr L J 797.

——Committal proceedings — Propriety of filing piecemeal challans — Commencement of trial on receipt of first challan without waiting for final challan — Validity of trial — Recording of evidence relating to other and final challan filed after completion of investigation — Legality—See ibid, S. 208,

AIR 1952 Him Pra 81=1952 Cr L J 1720.

——Commitment proceedings —Power of police to reopen investigation — Powers and duties of committing Magistrate—See also ibid, S. 156

AIR 1952 Orissa 350 = 1952 Cr L J 1635.

——Charge-sheet, when can be called—Final report of Police that case was non-cognizable accepted by Sub-Divisional Officer — Subsequently Court Sub-Inspector moving Magistrate on Inspector's report and copy of Government letter addressed to Deputy Inspector-General of Police that cases should be tried and decided in Court—Magistrate calling for charge-sheet — There was, held, no proper material to put accused on trial—Magistrate, held did not act judicially and order must be quashed in revision.

A complaint was made to the Magistrate about a cognizable offence. The investigating officer submitted a final report that the case was non-cognizable which was accepted by the Sub-Divisional Magistrate. The Magistrate was subsequently moved by the Court Sub-Inspector on a letter or report of the Inspector of Police and a copy of a letter from the Chief Secretary to Government in which it was stated that Government were of opinion that the counter-cases should be tried and the issue decided in the Court. This letter was addressed to the Deputy Inspector-General of Police, C. I. D., and was sent to the Inspector in the usual course for information and compliance. The Inspector wrote that in face of the Government orders, charge-sheets will have to be submitted in both the cases and he enquired if it would be regular for the Police to submit the charge-sheets suo motu or whether in order "to regularize judicial proceedings," the Sub-Divisional Officer should call for charge-sheets. Upon this, the Magistrate's order was "Inspector's report and copy of Government orders seen. Call for a charge-sheet." On the subsequent date, the Magistrate noted that the charge-sheet had been received, and transferred the case to another Magistrate for disposal, adding, "you will please have the original record called for"; the accused

CRIMINAL P. C. (V of 1898), S. 173—9. Report to whom to be sent

and the witnesses were thereafter summoned in accordance with the charge-sheet :

Held, (i) that the Magistrate was competent under the law to reconsider the order accepting the final report of the Police but he could only do so on proper materials ;

(ii) that the application in revision against the order of the Magistrate calling for the charge-sheet was one to revise the judicial order of the Magistrate and not the orders of the Government;

(iii) that neither the Inspector's report nor the copy of the Government orders on which materials the order passed by the Sub-Divisional Magistrate calling for a charge-sheet was founded, contained any relevant materials which could form the basis of that order whether by way of judicial action or as an obvious preliminary to judicial action. The Magistrate did not consider whether there were any proper materials for his putting the accused on their trial. It was clearly his duty as a judicial officer to form his own views on proper materials instead of merely carrying out the views of Government in his judicial work as a Magistrate. The Magistrate did not apply his judicial mind before putting the accused on his trial. As he took the judicial action upon what he took to be Government orders and not upon proper materials, the proceedings must be quashed. (Dhavle J.) N. L. Carrick v. Emperor,

AIR 1941 Pat 395 = 22 P L T 348 = 7 B R 681 = 13 R P 662 = 194 I C 94=42 Cr L J 504.

——Where the cases are disposed of by Sub-Divisional Magistrate as non-cognisable, there can be no charge-sheet under S. 173. (Dhavle J.) N. L. Carrick v. Emperor,

AIR 1941 Pat 395 = 22 P L T 348 = 7 B R 681= 13 R P 662 = 194 I C 94 = 42 Cr L J 504.

——Investigation by Police — Power of District Magistrate to order further investigation after framing of charge.

After the Police have investigated into an offence and sent up the case for trial under S. 173, Criminal P. C., and especially after a charge has been framed, the District Magistrate has no power to direct the Police to make a further investigation with a view to find whether there is evidence in favour of the accused, even though he thinks further investigation is necessary in order to enable him to decide whether he should direct the Public Prosecutor to withdraw the case. (Jai Lal J.) Emperor v. Ali,

AIR 1932 Lah 611 = 33 P L R 793 =Ind Rul (1932) Lah 675 = 140 I C 25 = 33 Cr L J 912.

——The Distric Magistrate has no power under the Criminal Procedure Code to call for a charge-sheet after the final report is put up before a Magistrate empowered to take cognizance of the offence under S. 173 and is disposed of by him. (Jwala Prasad J.) Shukadeva Sahay v. Hamid Miyan,

AIR 1928 Pat 585 = 7 Pat 561 = 10 P L T 14 = 11 A I Cr R 209 = 111 I C 862 = 29 Cr L J 942.

——Information to police of cognizable and non-cognizable offence — Police report to Magistrate that case was non-cognizable accepted by him—Legality of Magistrate's subsequent order calling for charge-sheet from Police for the cognizable offence— On an information charging the accused with a cognizable and a non-cognizable offence, the Police reported that the charge of cognizable offence was false. The Magistrate accepted the Police-report and passed orders accordingly. Subsequently however he ordered the Police to send up the charge-sheet for the cognizable offence, though there was nothing in the Police-report or on the materials before the Magistrate to support a charge of such offence. On the order of the

CRIMINAL P. C. (V of 1898), S. 173 — 9. Report to whom to be sent

Magistrate, the Police sent up a charge-sheet for the cognizable offence, and proceedings were commenced against the accused; held that the proceedings so taken were bad and ought to be quashed as the Magistrate in such circumstances could not order the police to send up a charge-sheet. (Brett and Gupta JJ.) Mokamiji Das v. Emperor

11 C W N 832 = 6 Cr L J 34.

——Police report under S. 173 — Power of Magistrate to make preliminary investigation — See Criminal P. C., S. 159

1 Cr L J 539 (Upp Bur).

10. Right of accused to copy of report

——S. 173 (4) — Right of accused to copy of entry in col. 6 of charge-sheet — Criminal R. P. No. 192 of 43-44, Overruled.

A charge-sheet is something more than a report under S. 173, Criminal P. C. Col. 6 of the charge-sheet contains the substance of the statements of the witnesses made before the Police and this is not required to be stated in a report under S. 173, Criminal P. C. The accused is not entitled to a copy of this at the commencement of the trial. A copy of such portion of charge-sheet as contains information which is prescribed in S. 173, Criminal P. C. alone is what the accused is entitled to. The amendment in 1927 of S. 173 has not in any way affected the right of the accused to get copy of only certain columns of the charge-sheet. Criminal Revn. Petn. No. 192 of 43-44, Overruled. (Mallappa & Vasudevamurthy JJ.) Raju v. Govt. of Mysore

AIR 1951 Mys 106 = ILR (1951) Mys 430 = 52 Cr L J 1211.

11. What the report should contain

——Ss. 173 (1) (a), 190 (1) (b) and 537 — Police report not conforming to S. 173 (1) (a)— Cognizance of offence cannot be taken by Magistrate.

Where a Magistrate took cognizance on a charge-sheet submitted by a Police Officer which merely referred to the first information report but did not contain the statement of facts constituting the offences nor did it conform to the provisions of S. 173 (1) (a), Criminal P. C.

Held that the taking cognizance of the case on the basis of such a defective charge-sheet was illegal and the proceedings were quashed,

(2) That the defect was not curable under S. 537, Criminal P. C. as it had occasioned failure of justice. (Narendra Nath Sen Gupta J. C.) Aghor Ch. Dev Barma v. Government of Tripura

AIR 1952 Tripura 14 = 1952 Cr L J 1405.

——S. 173 (1) (a) — Contents of police report — First report giving all necessary particulars —Supplementary report naming only formal witnesses — Effect on first report — Criminal P. C., S. 190.

All that S. 173 (1) (a) requires is that as soon as the police investigation under Chap. 14 is complete, the police should forward to the Magistrate a report in the prescribed form setting forth the names of the parties the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case. Where, therefore, the first report made by the police to a Magistrate, though called incomplete challan, contains all these particulars and a second report called a supplementary challan is filed subsequently, giving the names of certain witnesses who are merely formal witnesses, the first report is in fact, a complete report as required by S. 173 (1) (a) and it is not necessarily vitiated by the mere fact that a supplementary challan is subsequently filed. (Fazl Ali, Patanjali Sastri, S. R. Das and Vivian Bose JJ.) Tara Singh v. State

AIR 1951 S C 441 = 1951 S C J 518 = 1951-2 M L J 291 = 1951 Mad W N 757 = 1952 S C A 458 = 1951 Mad W N Cr 225 = 1951 All L J 640 = 1951 S C R 729 = 64 Mad L W 996 = 52 Cr L J 1491.

CRIMINAL P. C. (V of 1898), S. 173—11. What the report should contain

——Right to insist on production of documents by prosecution before case starts.

Neither in S. 173, Criminal P. C. nor in the form prescribed by the Local Government is it provided that the prosecution should produce, along with the chalan, all the documents on which reliance is to be placed in the trial or which have to be produced by the witnesses to be tendered for the prosecution. An accused person is consequently not entitled as of right to insist upon the production of any such document before the case starts. He does not run the risk of being hampered in his defence, as the law clearly entitles him to cross-examine the witnesses even after the charge. (Din Mohammad J.) K. L. Gauba v. Emperor

AIR 1937 Lah 411= ILR (1937) Lah 114=39 P L R 643 = 10 R L 135 = 170 I C 586 = 38 Cr L J 955.

——Where the Court makes an order for investigation under S. 155 (2) and a charge-sheet is filed after making the investigation, that charge-sheet can be regarded as coming under the description of report; but if such charge-sheet, after mentioning sections of Penal Code, fails to give any details or circumstances of any description, the provisions of S. 173 which require that the nature of of the information should be stated and those of S. 190 (1) (b) which require that the facts constituting the offences should be stated are disregarded and so prosecution cannot be based on such charge-sheet treating it either as report or complaint. (Mirza and Broomfield JJ.) Shivlingappa Bhagappa, In re

AIR 1930 Bom 372=32 Bom L R 782=127 I C 110= 1930 Cr C 891 = 31 Cr L J 1142.

——Requirements.

S. 173 does not require to be entered in charge-sheet abstract of evidence given by each of the witnesses and the charge-sheet prescribed by G. O. No. 3487 Law (General), dated 16th October 1938 and published in the Fort St. George Gazette dated 23rd October 1928, can be legally prescribed under S. 173 although it requires less details to be given than the form previously prescribed and is not illegal. (Reilly J,) Balasundaram, In re

AIR 1930 Mad 191 = 122 I C 341 = 1930 Cr C 191= 1929 M W N 504 =2 M Cr C 190=31 Cr L J 387.

——In a case investigated by the police against three persons for theft the police sent up their report wherein one person had been described as concerned in theft and for the other two they reported that witnesses spoke against them on account of enmity but if the Court thought there was evidence against them the Court may issue warrants.

Held, that the report was a police report within S. 173 even as regards the other two persons. (Kincaid J. C., Raymond and Aston A. J. Cs.) Mehrab v. The Crown

AIR 1924 Sind 71 = 83 I C 885 = 17 S L R 150 = 26 Cr L J 181 (FB).

——Ss. 173, 190—Police report under S. 173 defective — No cognizance of case to be taken.

A police report under section 173 of the Criminal Procedure Code should set forth the nature of the information; and where it is defective in that particular, the

CRIMINAL P. C. (V of 1898), S. 173—11. What the report should contain

Magistrate should not take cognizance of the case. (Jenkins C. J. and Carnduff J.) Lee v. Adhikary

5 Ind Cas 553=14 C W N 304=37 C 49 = 11 Cr L J 145 (2).

—S. 174.

SYNOPSIS

1. Scope and object of S. 174
2. Officer specially empowered
3. Evidentiary value of report
4. Map or plan of scene of offence
5. Post mortem examination
6. Confession at the inquest
7. False statement at inquest
8. Disposal of articles recovered

1. Scope and object of S. 174

——Object of.

The procedure under S. 174, Criminal P. C., is for the purpose of discovering the cause of death. (Young C. J.) Chaman Lal v. Emperor,

AIR 1940 Lah 210 = 13 R L 41=I L R (1940) Lah 521=188 I C 440=41 Cr L J 639.

——The proceedings under S. 174 should be kept quite distinct from the proceedings taken on the complaint regarding the same death. (Broadway J.) Gulab Khan v. Ghulam Md. Khan,

A I R 1927 Lah 30=8 Lah L J 524=27 P L R 779=99 I C 58=7 A I Cr R 214=28 Cr L J 26.

——Applicability.

Section 174 is intended to be applied to cases in which an inquest is necessary. It has no application where offence was committed eighteen months before the investigation. (William Clark C. J., and Reid J.) Gul Hasan Shah v. King-Emperor,

27 P R 1908 Cr=30 P W R 1908 Cr=9 Cr L J 105.

2. Officer specially empowered.

——S. 174 (4)—U. P. Village Panchayat Act (VI of 1920), S. 75, Rr. 34, 35 — Report of occurrence by chaukidar—Panchayat village — Chaukidar directed to report after completion of panchayatnama—Procedure, if proper.

Where a report of an occurrence was made by a chaukidar, and he was directed to make a report after the completion of a formal panchayatnama as the village was a panchayat village.

Held, that the procedure being correct under Rr. 34 and 35 framed under S. 75, U. P. Village Panchayat Act, it could not be objected to as not being in accordance with S. 174 (4), Criminal P. C. (Bennet and Bajpai JJ.) Sheo Dina v. Emperor,

AIR 1933 All 939=6 R A 542 (2)=147 I C 676 (2)=35 Cr L J 464.

——A village head acting under Ss. 174 and 175 has only the powers of a police officer specified in the latter section—See ibid, S. 174,

11 Cr L J 500 (Mad).

3. Evidentiary value of report.

——Statements made to police at inquest cannot be used as substantive evidence — Statement by person at time when there was no suspicion against him, also cannot be used as substantive evidence—See ibid, S. 162,

AIR 1952 Trav-Co 300=1952 Cr L J 1290.

——Practice of getting inquest report embodying the statements of witnesses and accused signed by them deplored as un-wholesome and unwarranted—See ibid, S. 162,

AIR 1952 Trav-Co 300=1952 Cr L J 1290.

——Evidence—Inquest report—Proof.

CRIMINAL P. C. (V of 1898), S. 174—3. Evidentiary value of report

An inquest report (panchanama) has to be proved, not only as regards the fact that it was prepared but as regards its contents. (It was, however, held that the inquest report which the witnesses stated that they signed but the contents of which were not proved could not be overlooked entirely and could be considered with other evidence. (Qamar Hasan and Ahmed Mohiuddin Ansari JJ.) Abaji v. Hyderabad State,

AIR 1952 Hyd 55=1952 Cr L J 572.

——Ss. 174, 162—Statements of witnesses at police inquest—Use of.

The statement of a witness at the inquest can be used by the accused only to contradict any portion of the evidence given at the trial and it is wrong to test the truth of the evidence given by a witness at the trial by the statement of the witness at the inquest held by the police during investigation : 9 Tr. L T 629 and 9 Tr L T 1408, Rel. on. (K. T. Koshy and Simon JJ.) Govidan Krishnan v. Sirkar Prosecutor,

AIR 1950 Trav C 20=51 Cr L J 833.

——Police Officer suffering from lapse of memory as to the presence of bloodstains or injuries — Court inviting him to refresh his memory by reference to memorandum prepared by him in course of investigation — Police Officer's failure to do so :

Held, that there is nothing in the wording of S. 174 which suggests that it was ever intended that information on any such point should be deliberately withheld if it should happen to be in any way necessary for the decision of the case. (Young C. J. and Beckett J.) Fatnaya Lal Khan v, Emperor,

AIR 1942 Lah 89=43 P L R 680=I L R (1942) Lah 470=14 R L 438=199 I C 870=43 Cr L J 588.

——Statements of witnesses in inquest report.

The Court is justified in refusing to allow the brief statements of witnesses incorporated in the inquest report to be read out to the assessors as there is no provision in the Code for doing so. (Zafar Ali and Johnstone JJ.) Banta Singh v. Emperor,

AIR 1930 Lah 457 = 122 I C 491=1930 Cr C 561=31 Cr L J 444.

4. Map or plan of scene of offence.

——Evidence—Maps and plans of spot by police—Person preparing them should note therein nothing more than what is actually seen by him — AIR 1924 Cal 1029 Reiterated. (Sanderson C. J. and Panton J.) Emperor v. Mofizel Peada,

A I R 1925 Cal 909=89 I C 242=29 C W N 842=26 Cr L J 1298.

——Maps should contain what the preparer himself sees.

The person who makes a map for use in a criminal case ought not to put upon it anything more than what he sees himself. Particulars derived from witnesses examined on the spot should not be noted on the body of the map, but on a separate sheet of paper annexed to the map as an index thereto, the spots being marked, A, B, C, D, etc. If this course is not adopted, the map, although it may be prepared perfectly bona fide, may turn out to be misleading. (Sanderson C. J. and Chotzner J.) Abinash Chandra Bose v. King-Emperor,

A I R 1924 Cal 1029 = 84 I C 654=52 Cal 172=28 C W N 995=26 Cr L J 350.

5. Post mortem examination.

——Post-mortem report—Requirements.

It is the duty of the doctor, in a suspected case of infanticide, to record in the post-mortem report, data for arriving at the two main conclusions germane to such

CRIMINAL P. C. (V of 1898), S. 174 — 5. Post mortem examination

case that the child was born alive and that it met with a post-natal violent death. (Choudhry J. C.) Vidyamati v. The State,

AIR 1951 Him Pra 82=1952 Cr L J 33.

——Post-mortem examination how to be conducted.

Medico-legal post-mortem examination is a very important part of the prosecution evidence, and it is therefore necessary that it be conducted by a doctor fully competent, alike by his training and experience, to do so. (Choudhry J. C.) Vidyamati v. The State,

AIR 1951 Him Pra 82=1952 Cr L J 33.

——The fact that the inquest is held in the presence of two or more respectable inhabitants does not render the statements taken by police officer S. 174 any the less statements made to a police officer. Such statements are therefore not public documents of which accused is entitled to a copy and the procedure which governs the grant of copies of statements under S. 162 governs also the grant of copies of statements made at the inquest. A. I. R. 1926 Mad. 183, Rel. on. When the medical officer is not examined at the beginning of the enquiry, a copy of the post mortem certificate ought to be given to the accused for the purpose of enabling him to conduct his defence, and so the inquest report (excluding statements made therein), when the investigating police officer is not examined at the beginning of the enquiry. (Wallace J.) Maruthamuthu Kudumban v. King-Emperor,

AIR 1927 Mad 512=50 Mad 750=25 M L W 599=38 M L T 314=1927 M W N 392=101 I C 495=8 A I Cr R 80=52 M L J 601=28 Cr L J 463.

——Post mortem examination—Importance as evidence.

Considering the important nature of the evidence generally furnished by the results of a post mortem examination, the results of the observation should be carefully recorded. (Ayling and Abdur Rahim JJ.) Pachudayan v. Emperor,

(1911) 1 M W N 138=9 I C 730 = 9 M L T 321=12 Cr L J 124.

6. Confession at the inquest.

——Statement in inquest report that accused confessed guilt—Admissibility.

Where an Inquest Report contains a statement that the accused had confessed that he had killed the deceased, that portion of the report which relates to the confession is inadmissible in evidence. (Sen and Hemeon JJ.) Deorao Ramji v. Emperor,

A I R 1946 Nag 321 = I L R (1946) Nag 946 = 226 I C 377=47 Cr L J 918.

7. False statement at inquest.

——Ss. 174, 175 and 161—Police inquiry under S. 174—Voluntary of information is not bound to speak the truth.

A man who comes forward without being summoned and volunteers information at the Police enquiry under S. 174, is not bound to give true answers to questions. (Campbell J.) Mahomed Hayat v. Emperor,

A I R 1922 Lah 133=6 P W R 1922 Cr=65 I C 434 =23 Cr L J 82.

8. Disposal of articles recovered.

——Articles recovered from or near the corpse of deceased—It is duty of police to send them to malkhana in sealed cover with contents noted above—Otherwise no reliance can be placed upon evidence furnished by recovery of these things. (Agarwala and Bhargava JJ.) Dr. Jai Nand v. Rex,

A I R 1949 All 291 = 1949 A W R H C 13 = I L R (1949) All 658=1949 A L J 60=50 Cr L J 498.

CRIMINAL P. C. (V of 1898), S. 174—8. Disposal of articles recovered

——Articles recovered from or near corpse—Disposal of—See Criminal Trial,

A I R 1949 All 291=50 Cr L J 498.

—S. 175.

——Panchanama prepared by police should not contain any incriminating statements made by accused in presence of police. (Divatia C. J. and Jhala J.) Mavji Ruda v. Saurashtra State,

A I R 1950 Sau 2=3 Sau L R 114.

——Powers of village head acting under Ss. 174 and 175—See ibid, S. 174.

11 Cr L J 500 (Mad).

——Statement under whether person examined bound to speak truth—See Penal Code, S. 193,

2 Cr L J 590 (Kathiawad).

—S. 176.

——Magistrate holding inquest under S. 176 recording confession — Admissibility — See Evidence Act (1872), S. 21,

A I R 1953 Mad 138=1953 Cr L J 315.

—S. 176 (1).

——Magistrate holding inquest under S. 176 — Power to record confession—Non-compliance with S. 364—See ibid, S. 164,

A I R 1953 Mad 138=1953 Cr L J 315.

——Ss. 176, 537—Failure to make inquest—Effect.

An enquiry under S. 176, Criminal P. C. into the cause of the death of the deceased is not necessary where there is no corpse on which an inquest can be held. But even if a failure on the part of a Magistrate to hold such an inquiry be held to be wrong, the defect is curable under S. 537, Criminal P. C. (Sen and Hemeon JJ.) Ghudo Ramadhar v. Emperor,

A I R 1945 Nag 143=1945 N L J 134=I L R (1945) Nag 315=1946 Nag Rul 41 = 221 I C 507=47 Cr L J 196.

——Statement of witnesses—Copies, grant of.

A Magistrate is competent to grant copies of the statements recorded under S. 176, Criminal P. C. of witnesses who are going to be examined at the preliminary enquiry. (Happell J.) In re Venkataramana Rao,

A I R 1945 Mad 64=(1944) 2 M L J 292=57 M L W 560 (1)=1944 M W N 687 (1)=218 I C 112=46 Cr L J 412.

——The Sub-Divisional Magistrate when holding an inquiry under S. 176, Criminal P. C. is acting as a Court subordinate to the High Court for the purposes of the Contempt of Courts Act. (Mya Bu and Moseley JJ.) Advocate-General v. Maung Chit Maung,

A I R 1940 Rang 68 = 1940 Rang L R 188 = 12 R Rang 337=187 I C 573=41 Cr L J 470.

——Investigation—Person connected with police inquiry dying suddenly—Necessity of investigation.

Where a person connected with Police inquiry suddenly dies, necessity of holding magisterial investigation pointed out. (Grille and Gruer JJ.) Nehroo Mangtu v. Emperor,

A I R 1937 Nag 220=9 R N 281=I L R (1937) Nag 268=168 I C 962=38 Cr L J 642.

——Ss. 176, 202—Independent inquest report by another Magistrate, value of—Dismissal of complaint on the basis of such report, legality of.

An inquest under S. 176, Criminal P. C., by another Magistrate not under the orders of the Magistrate before whom the complaint is filed, cannot take the place of an enquiry contemplated by S. 202, Criminal P. C., and it is illegal for a Magistrate to reject a complaint on the basis

of a report made in such an inquest. (Lort-Williams and Mallik JJ.) Surendra Nath v. Police Sergeant,

A I R 1932 Cal 121 = 35 C W N 1032 = Ind Rul (1932) Cal 174=135 I C 878=33 Cr L J 218 (2).

——In the course of an inquiry held under S. 176 by a mahalkari who was invested with powers of a 2nd Class Magistrate by name the District Superintendent of Police reported, imputing a cognizable offence to the Magistrate in the conduct of the enquiry, to the Collector and District Magistrate; the Collector started departmental enquiry and suspended the Magistrate and relieved him of his functions as mahalkari and Magistrate.

Held, that if the Collector was satisfied on perusal of the papers that there was an illegality or an irregularity in the proceedings, under S. 176 he could have reported, to the High Court under S. 438, and the High Court would have passed such orders as it thought fit, but the action of Collector in interfering with the judicial enquiry and virtually putting an end to it was both illegal and improper and that the Magistrate continued to be a 2nd Class Magistrate though he was suspended as mahalkari, as the power of suspending the Magistrate was given only to Local Government by S. 26, (1887) Unrep. Cr. C. 322, Rel. on. (Mirza and Patkar JJ.) Laxminarayan Timmanna Karki, In re,

AIR 1928 Bom 390=30 Bom L R 1050=11 A I Cr R 324=112 I C 567=29 Cr L J 1063.

——Check on police.

S. 176 proceeds upon the basis that enquiry into a suspicious death should not depend merely upon the opinion the police may form but that there should be a further check by enabling a local Magistrate to hold an independent enquiry. (Mirza and Patkar JJ.) Laxminarayan Timmanna Karki, In re,

A I R 1928 Bom 390 = 30 Bom L R 1050=11 AI Cr R 324=112 I C 567=29 Cr L J 1063.

——Proceedings of a Magistrate under S. 176 are an "inquiry" as defined by S. 4 (1) (k) and a "judicial proceeding" as defined by S. 4 (1) (m). (Mirza and Patkar JJ.) Laxminarayan Timmanna Karki, In re,

A I R 1928 Bom 390=30 Bom L R 1050=11 A I Cr R 324=112 I C 567=29 Cr L J 1063.

——Proceedings.

The High Court has power to revise proceedings of a Magistrate under S. 176, either under S. 435 or S. 439, apart from its inherent powers under S. 561-A. (Mirza and Patkar JJ.) Laxminarayan Timmanna Karki, In re,

AIR 1928 Bom 390=30 Bom L R 1050=11 A I Cr R 324=112 I C 567=29 Cr L J 1063.

— S. 177.

See also ibid, S. 531.

SYNOPSIS

1. Scope of Section 177.
2. Question of jurisdiction.
3. "Ordinarily".
4. Several offences—Venue.
5. Venue for trial of offence.
   (a) Abetment
   (b) Bigamy
   (c) Cheating
   (d) Conspiracy
   (e) Criminal breach of trust
   (f) Defamation
   (g) Enticing away a married woman
   (h) False charge against police
   (i) Infringement of copyright
   (j) Offence committed on high seas
   (k) Offences under special or local law

   (l) Receiving stolen property
   (m) Sedition
   (n) Theft
6. Transfer of territory from one State to another.
7. Transfer of area to another district.
8. Effect of trial at wrong place.
9. Committal by or to wrong Court.

—1. Scope of Section 177.

——Accused extradited from V. P. to take his trial in Rajasthan under Ss. 388 and 420, I. P. C. — Addition of charge under S. 161, I. P. C., which is non-extraditable offence—Legality—See also Extradition Act (1903), S. 7,

A I R 1953 Raj 12=1953 Cr L J 268.

——Ss. 177 and 182 — Concurrent jurisdiction — Proper forum.

It is a recognised, and in any event a convenient principle, that where two forums have concurrent jurisdiction the lower one should be approached at the first instance, unless the party concerned gives special reasons for a direct approach to the higher, such as extreme urgency or a momentous question of general public policy. (Krishnan J. C.) State v. Jagan Singh,

A I R 1952 Vind-Pra. 87=1953 Cr L J 74.

——Jurisdiction — It is derived from statute.

The jurisdiction of every Criminal Court to try a particular offence is derived from statute, either from the statute which creates the Court or from the statute which defines the offence and not from a particular officer. (Agarwala, Shearer and Sinha JJ.) Jhakar Ahir v. Province of Bihar,

A I R 1945 Pat 98=11 B R 249=18 R P 1=26 P L T 120=218 I C 122=46 Cr L J 399 (FB).

——Ss. 177, 200 — Complaint — Verification — Duty of Magistrates, stated.

When Magistrates verify complaints, they should inquire so far as they can, as to the scene of the offence so as to find out as soon as possible whether the complaint is or not within their jurisdiction and thus save their own time, and the time of the District Magistrate and the time of the High Court. (Davis J. C.) Ismail Abdul Karim v. Nural Yar Muhammad,

A I R 1937 Sind 31=9 R S 148 (1)=166 I C 622=38 Cr L J 291 (1).

——All the sections in Chap. XV are to be read subject to the general rule that an act committed on land outside British territory by a foreigner not being a servant of the king, is not an offence triable by the British Courts. (Rupchand J. C. and Lobo A. J. C.) Gokaldas Amarsee v. Emperor,

A I R 1933 Sind 333=6 R S 180=27 S L R 392=148 I C 135 (2)=35 Cr L J 585.

——Power of Local Government to specify Court for trial of public servants—See Criminal P. C., Ss. 197, 177,

8 Cr L J 70 (Low Bur)

2. Question of jurisdiction.

——Jurisdiction—Objection to.

Where a preliminary objection is raised which goes to the root of the Magistrate's jurisdiction, the Magistrate should decide it immediately. (King J.) Ramaswami Padayachi v. Chidambara Reddiar,

1935 M W N 1290 (2).

——Acquittal—Question of jurisdiction.

Question of jurisdiction should be determined first and not left to be determined after the Court has made up its mind whether to acquit or convict—It is clearly illogical that a verdict of acquittal should be recorded as the ulti-

CRIMINAL P. C. (V of 1898), S. 177—2. Question of jurisdiction

mate result of a trial in respect of which it has not been finally determined that it was held before a Court of competent jurisdiction. (Mears C. J. and Piggott J.) Emperor v. Har Prasad Bhargava,

A I R 1923 All 91=45 All 226=21 A L J 42=L R 4 A 19 (Cr)=77 I C 961=25 Cr L J 497.

——Magistrate seeking advice of District Magistrate as to jurisdiction, improper.

Where a Magistrate before whom an accused was placed on trial became doubtful as to his jurisdiction and thereupon sought the advice of the District Magistrate and on the receipt of the latter's opinion on the question of jurisdiction, proceeded to try the Case. Held, that the Magistrate should not have asked for the advice of the District Magistrate in the way he did, but was bound to finish his inquiry, complete his record, by the reception of all evidence of relevant facts including the facts which bore upon the question of accused's amenability to his jurisdiction, and then as a Magistrate pass such order as seemed to him to be legal and proper. (Batchelor and Rao JJ.) Emperor v. Abdul Rahiman Mohin,

37 Bom 144 = 17 I C 530 = 14 Bom L R 891=13 Cr L J 786.

——Illegality of arrest—Effect.

The legality or illegality of the arrest of a person does not affect the jurisdiction of a competent Court in convicting him. (Reid C. J. and Chatterji J.) Jumo v. King-Emperor,

17 P R 1906 Cr=60 P L R 1907=5 Cr L J 89.

3. "Ordinarily".

——"Ordinarily" — Meaning of — Provinces and States (Absorption of Enclaves) Order (1950), S. 8.

The word "ordinarily" in S. 177 means "except in cases provided to the contrary." The rule in S. 177 should be read subject to any special provision of law which may modify it. Where an appeal against conviction is filed in the Punjab High Court before the date with effect from which the place where the incident took place ceased to form part of the Punjab State and was included in the Patiala and East Punjab States Union, the Punjab High Court would have jurisdiction to decide the appeal. There is no indication in S. 8 or any other provision of the Provinces and States (Absorption of Enclaves) Order, 1950, to take away the right to continue the appeal in the Punjab High Court. (Harnam Singh and Kapur JJ.) Nikka Singh v. State,

AIR 1952 Punj 186=ILR (1951) Punj 231=1952 Cr L J 775.

——The word 'ordinarily' in S. 177 means 'except where provided in the Code. Consequently, where the accused entices and takes a married woman in Madras and brings her to Bombay, the Magistrate in Bombay has no jurisdiction to try the offence. (Broomfield and Sen JJ.) Ram Narayan Baburao v. Emperor,

AIR 1937 Bom 186=39 Bom L R 61 = I L R (1937) Bom 244=10 R B 34=169 I C 526=38 Cr L 7 769.

——Ordinarily.

The word "ordinarily" in S. 177 must be taken to mean "except in the cases provided hereinafter to the contrary." AIR 1925 Pat 187, Foll. (Fawcett and Mirza JJ.) Emperor v. Goverdhan Ridkaran,

AIR 1928 Bom 140 = 30 Bom L R 387 = 10 A I Cr R 157=109 I C 355=29 Cr L J 533.

——"Ordinarily" — Special provision in S. 197, Criminal P. C.

The use of the word "ordinarily" in the section indicates that the rule in the section is to be read subject to any special provisions of law which may modify it.

CRIMINAL P. C. (V of 1898), S. 177 — 3. "Ordinarily"

The section must be read as subject to the special provisions of S. 197 (2). The power given in S. 197 (2) overrides the general rule contained in S. 177. (Moore J.) King-Emperor v. Maung Ka,

4 L B R 265=8 Cr L J 70.

4. Several offences—Venue.

——Objection to jurisdiction applying to some charges — Whole case is not without jurisdiction.

Where the objection as to jurisdiction applies to one or some of the charges and does not apply to the rest, the whole case cannot be regarded as being without jurisdiction. The mere fact that the Court has no territorial jurisdiction or the requirement of the proviso to S. 188 has not been satisfied as regards one charge does not in any way exclude the jurisdiction of the Court to entertain another or other charges not similarly affected or render the prosecution under such charges illegal or irregular. (Happell and Govindarajachari JJ.) In re Antony D'Silva,

AIR 1949 Mad 3 = 61 M L W 503 = 1948-2 M L J 132=1948 M W N 524=50 Cr L J 70.

——An accused was charged under S. 366 and S. 376 and 114, I. P. C., the offence under S. 366 triable at A and the offence under Ss. 376 and 114 triable at B, and he was ordered to take trial for both the offences at B.

Held, that the Court at B had no jurisdiction to try the second offence which was triable at A. (Mirza J.) Emperor v. Mohanlal Aditram,

AIR 1928 Bom 475 = 30 Bom L R 1253=12 A I Cr R 49=113 I C 617=30 Cr L J 191.

5. Venue for trial of offence.

(a) Abetment.
(b) Bigamy.
(c) Cheating.
(d) Conspiracy.
(e) Criminal breach of trust.
(f) Defamation.
(g) Enticing away a married woman.
(h) False charge against police.
(i) Infringement of copyright.
(j) Offence committed on high seas.
(k) Offences under special or local law.
(l) Receiving stolen property.
(m) Sedition.
(n) Theft.

5. Venue for trial of offence.

(a) Abetment.

——Cheating in British India — Abetment in Native State—British Indian Court—Jurisdiction.

Courts of British India have no jurisdiction to try persons who are not British subjects for the offence of abeting in a Native State, an act of cheating committed by others in British India: 10 Bom H C R 356, Ref. (Chevis J.) Raj Bahadur v. Emperor,

AIR 1918 Lah 49=23 P R (Cr) 1918 = 47 I C 447= 28 P W R Cr 1918=19 Cr L J 931.

5. Venue for trial of offence.

(b) Bigamy.

——Offence of bigamy under Madras Hindu (Bigamy Prevention and Divorce) Act, 1949—Venue of trial—See Madras Hindu (Bigamy Prevention and Divorce) Act VI [6] of 1949), S. 4,

AIR 1950 Mad 823.

——Place of second marriage.

The offence of bigamy and the abetment of bigamy is triable only in the district in which the second mar-

CRIMINAL P. C. (V of 1898), S. 177 — 5. Venue for trial of offence—(b) Bigamy

riage or the abetment took place and not in the district in which the woman is reported to have been enticed away. (Martineau J.) Amirchand v. The Crown,

AIR 1924 Lah 732=85 I C 365=6 L L J 422=26 Cr L J 525.

5. Venue for trial of offence.

(c) Cheating.

——Ss. 177, 179 and 188 — Offence under S. 420, Penal Code—Accused printing lottery tickets at place in British India and despatching them from that place—A purchasing them in Travancore — B in Travancore purchasing from A — Lottery not held — Deception of B and parting of money by B held took place at Travancore —C in Trichur (place in Travancore) ordering tickets by V. P. P. — Payment made at Post office in Trichur—Post office held acted as agent for accused — Deception held took place at Trichur—Assuming Post Office acted as agent of C in transmitting money to accused, consequence of deception took place in British India and S. 188 applied.

Dealing with a case coming under S. 420, Penal Code, if the deception and the deprivation of property both take place within the local limits of the jurisdiction of a Court, S. 177, Criminal P. C., will directly apply. If, on the other hand, deception is practised within the territorial jurisdiction of one Court and the consequence, namely, payment of money occurs within the jurisdiction of another Court either Court can, by virtue of S. 179 of the Code, try the case subject of course to the applicability of the Code of Criminal Procedure to both the Courts. If one of these Courts is not governed by the Criminal Procedure Code, as for instance, where it is a Court situated in an Indian State, S. 179 has obviously no application to that Court. But where an offence is committed at any place without and beyond the limits of British India by a Native Indian subject of His Majesty S. 188 provides that he may be dealt with in respect of such an offence as if it had been committed at any place within British India at which he may be found subject to the proviso contained in S. 188 : 16 Cal 667, Rel. on.

The accused who were the residents of South Kanara and therefore "native Indian subjects of His Majesty" within the meaning of the Penal Code had printed in South Kanara lottery tickets. Some tickets were despatched from South Kanara to Travancore to A who had purchased them. A sold them in his turn to another person B in Travancore. The accused never held the lottery. The question was as to the place of the commission of the offence under S. 420. It was contended by the accused that both the ingredients of the offence, namely deception and parting with property by the person deceived had taken place in Travancore within jurisdiction of a Sovereign State. For the Crown it was contended that the deception had taken place in South Kanara, that the sending of tickets from South Kanara and their purchase by B formed parts of one transaction and that Courts in South Kanara had jurisdiction to try the accused;

Held that the printing of the lottery tickets in South Kanara or their despatch to Travancore could not be regarded as being an essential part of the deception which is contemplated by S. 415, Penal Code. If the accused were guilty of deceiving B by the representation contained in the lottery tickets, the deception or representation for the purpose of S. 415, Penal Code, must be taken to have commenced only when B saw them and was induced to believe in something which was not true. The acts which preceded the display of the

CRIMINAL P. C. (V of 1898), S. 177— 5. Venue for trial of offence—(c) Cheating

tickets to B could in no sense be regarded as forming an integral part of the offence of cheating. The representation must be deemed to have been made in Travancore and nowhere else : A I R 1948 Mad 292, Rel. on.

In the above case, one C in Trichur (a place in Travancore State) had written to the accused in South Kanara asking for lottery tickets to be sent by V. P. P. The accused complied with the order and C took the delivery of the parcel at Trichur by paying money to the post office at Trichur which was ultimately paid by the post office to the accused in British India;

Held that the conduct of the accused in sending a consignment of lottery tickets without any attempt to disillusion C might be regarded as a concealment of facts within the meaning of the Explanation to S. 415, Penal Code, and therefore deception by conduct, but that deception again must be held to have been practised in Trichur. The effect of the payment to the post office was the same as if accused had come to Trichur to get the money. The secondary receipt by the accused of the same at South Kanara was of no importance : AIR 1943 Mad 500; AIR 1927 Mad 544 and AIR 1916 Mad 438, Rel. on.

Held also that assuming for a moment (on the assumption that the post office acted as agent of C for transmitting money) that the delivery of the money must be taken to have been made in South Kanara when the value of the packet was finally paid over to the accused, the result would only be that the deception was in Trichur and the consequence was in South Kanara. Under S. 179, Criminal P. C., the South Kanara Court would then have jurisdiction but a part of the offence would have occurred outside British India. And under the Proviso to S. 188, Criminal P. C., a certificate of the Political Agent as contemplated by that proviso would be needed. (Happel and Govindarajachari JJ.) In re Anthony D'Silva,

AIR 1949 Mad 3 = 61 M L W 503=(1948) 2 M L J 132=1948 M W N 524=50 Cr L J 70.

5. Venue for trial of offence.

(d) Conspiracy.

——Ss. 177 and 179 — Wrong measure used at Meerut—Discovery of fraud at Agra — Jurisdiction — Penal Code, Ss. 420 and 265.

A, sold at Meerut on the false representation that a barrel contained a certain quantity of spirits. It was found out at Agra—Held, that the Magistrate at Agra had no jurisdiction, for both alleged offences had been committed at Meerut and that S. 179 did not apply in as much as the discovery of the fraud after the delivery of the article was not a "consequence which had ensued" within S. 179. (Richards C. J.) Pragdas Bhargava v. Dawlatram,

AIR 1915 All 428=13 A L J 1067=31 I C 1001=16 Cr L J 825.

5. Venue for trial of offence.

(e) Criminal breach of trust.

——Ss. 177, 179—Penal Code (Act XLV of 1860), S. 420—Cheating by sending insured cover without money—Complaint—Jurisdiction.

A owed B a certain sum of money. He sent a letter insured for Rs. 400 to B through the Post Office addressed to a place in the Gujrat District intending to use the receipt given to the Post Office by B as proof of discharge of the debt. A filed a complaint against B in the Court of a Magistrate at Gujrat, under S. 420, I. P. C. :

CRIMINAL P. C. (V of 1898), S. 177 — 5. Venue for trial of offence—(e) Criminal breach of trust

Held, the Gujrat Court had jurisdiction to try the offence, under S. 179, Criminal P. C., if not also under S. 177. (Coldstream J.) Narain Das v. Prem Chand.

132 I C 864=32 P L R 6=Ind Rul (1931) Lah 704=32 Cr L J 996.

5. Venue for trial of offence.

(f) Defamation.

——Ss. 177, 180 — Conspiracy — Jurisdiction of Court where conspiracy is found at one place and offence in pursuance thereof committed at other place — Accused charged with conspiracy to abduct formed in U. P. — Allegation of further conspiracy to cheat, at Sukkur — Accused not charged of this—Two conspiracies not alleged to be parts of one transaction — Court at Sukkur, if can try offence of conspiracy formed outside its jurisdiction.

Conspiracy is a substantive offence in itself. It is not given in one of the illustrations to S. 180, Criminal P. C., as one of the offences which is an offence because of its relation to another offence, such as abetment which would give the Court jurisdiction either where the principal offence or the connected offence was committed, nor can it be brought within the meaning of the section itself. It is not one of the offences named in S. 181. The gist of the offence of conspiracy lies not in doing that act or effecting the purpose for which the conspiracy is formed nor in attempting to do any of the acts nor in inducing others to do them, but in the forming of the scheme of agreement between the parties. Conspiracy is generally a matter of inference deduced from certain criminal acts of the parties accused, done in pursuance of an apparent criminal purpose common between them. In certain cases, it may, therefore, be difficult for the Courts to decide whether a particular agreement which forms the basis of a criminal charge was made or concluded at a particular time or at a particular place. But it does not follow therefrom that the scope of the conspiracy would determine the place where the conspiracy or part of it occurred. It is not the act done in pursuance of the conspiracy but the place where the conspiracy was formed or made which determine the jurisdiction of the Court and it has been consistently held that in an indictment for conspiracy, the venue should be laid where the conspiracy was, and not where the result of such conspiracy was put in execution.

Five accused persons were tried by the Sessions Judge of Sukkur of offences under S. 120-B, conspiracy, under S. 366, kidnapping, and S. 420, cheating. It was not alleged in the charge that the conspiracy to abduct and the abduction was made in Sukkur where all the five accused lived. The criminal conspiracy was formed, that is to say, the offence was committed outside the Province of Sind and outside the jurisdiction of the Sukkur Court somewhere in the United Provinces. It was also alleged that there was a further conspiracy of cheating entered into at Sukkur but the accused were not charged with this second or further conspiracy at all. It was not the case of the prosecution that the two conspiracies were part of one transaction :

Held, that upon the facts of the case, and the charges as framed, S. 177, Criminal P. C., applied and the Court at Sukkur had no jurisdiction to try the offence of conspiracy committed outside the jurisdiction. (Davis J. C. and Lobo J.) Emperor v. Pursumal Gerimal,

A I R 1938 Sind 108=10 R S 298=I L R (1939) Kar 41=175 I C 620=39 Cr L J 630 (2).

5. Venue for trial of offence.

(g) Enticing away a married woman.

——Criminal breach of trust—Property must be received or retained within jurisdiction of trial Court — (Penal Code, S. 405).

CRIMINAL P. C. (V of 1898), S. 177 — 5. Venue for trial of offence—(g) Enticing away a married woman

In order to confer on a Court jurisdiction to try a case of criminal breach of trust, it must be shown that either the whole or part of the property, which is the subject of offence, was either received or retained by the accused within the jurisdiction of the Court. An accused cannot be said to retain within the jurisdiction of the trial Court the unaccounted for balance, which he is alleged to have misappropriated, merely because, he sent accounts and remittances to the complainant within the jurisdiction of that Court. (Parlett J.) M. A. Shakur v. Nga Me Gyi alias Mi Gyi,

8 Ind Cas 595=3 Bur L T 10=11 Cr L J 685.

——Adultery—Offence committed outside jurisdiction — Woman originally enticed away from place within jurisdiction.

The complainant filed a complaint under Ss. 497 and 498, Penal Code, before the Magistrate at C alleging that his wife was enticed away from his house in C by some unknown person to a place at L which was outside the territorial jurisdiction of the Magistrate. It was also alleged that the accused had subsequently removed the complainant's wife from L to another place which was also outside the jurisdiction of the Magistrate and was living there in adultery with her. There was no allegation that the accused had seduced her in C or that any offence was committed by him within the jurisdiction of the Magistrate : Held, that the case was governed only by S. 177 and not by S. 178 to 184 and that therefore the Magistrate had no jurisdiction to enquire into the complaint. (Lodge J.) K. K. Ram v. Prithwiraj Bucha.

A I R 1948 Cal 7=229 I C 115=48 Cr L J 241.

5. Venue for trial of offence.

(h) False charge against police.

——Defamation—Place of trial.

A complaint for defamation can be filed at the place where the letter containing defamatory matter was posted because it is the commencement of the process of publication. (Yahya Ali J.) In re, Appavoo Pillai,

A I R 1947 Mad 369 = 1947-1 M L J 367 = 1947 M W N 407.

——Ss. 176, 179—Defamatory letter sent to and received at Karachi—Complaint can be filed at Karachi.

Where a defamatory letter was despatched from Hyderabad to Karachi and was received at Karachi, there would be publication at Karachi and hence the Karachi Court has jurisdiction to entertain a complaint with regard to the offence of defamation. (O'Sullivan J.) Kundanmal Mulchand v. Emperor,

A I R 1943 Sind 196=16 R S 89 = 209 I C 234 = 45 Cr L J 105.

5. Venue for trial of offence.

(i) Infringement of copyright.

——Copyright—Infringement.

The printing for sale at Lahore of a book without the permission of its author is an infringement of a copyright and should be tried in the Lahore Court only. (Shadilal J.) Kali Das v. Karamchand,

AIR 1917 Lah 335=38 I C 737 = 28 P R Cr 1916 = 18 Cr L J 353.

5. Venue for trial of offence.

(j) Offence committed on high sea.

——Petition containing false and frivolous allegation against Police sent by post—Jurisdiction.

The accused sent a petition through post from P, containing false and frivolous charges against Police Officials to the District Superintendent of Police at V :

CRIMINAL P. C. (V of 1898), S. 177 — 5. Venue for trial of offence—(j) Offence committed on high sea

Held, that the Post Office acted as the agent of the accused in carrying the petition to the District Superintendent of Police at V and the effect was the same as if the accused had handed over the petition in person to him at V. The false or frivolous charge was, therefore, made at V and not at P and, therefore, the Magistrate having jurisdiction would be the Magistrate at V. (Horwill J.) In re, Abdul Shukur Sahib,

A I R 1943 Mad 500=1943 M W N 290 (1)=(1943) 1 M L J 409=16 R M 162=207 I C 543 = 44 Cr L J 660.

5. Venue for trial of offence—

(k) Offences under special or local law.

——Offence of illegal sale and transport of beer under Punjab Excise Act—Beer sold by company at R and sent to M under railway receipt with Company as assignee but endorsed in favour of purchaser.

The sale of beer in excess of the quantity allowed under the Punjab Excise Act was entered in the registers of a Company at R and the liquor was then sent to M under a railway receipt in which the name of the assignee was also shown as the Company although the receipt was thereafter endorsed in favour of the purchaser :

Held, that the offence of illegal sale as well as illegal transport were committed at R and prima facie, the Court at M had no jurisdiction to try these offences. (Bhide J.) A. J. Heywood v. Emperor,

AIR 1942 Lah 134=44 P L R 112=15 R L 10 = 200 I C 629=43 Cr L J 703.

——Complaint by commander of steamer against members of crew for rioting, etc.—Accused surrendering—Jurisdiction of Court to try case.

The commander of a steamer laid a complaint before the Chief Presidency Magistrate against certain members of the crew charging them with having been guilty of rioting and causing grievous hurt to some officers on the high seas before the steamer arrived at Calcutta. Processes were issued and warrants ordered to be served. The warrants were not executed as the accused were not found at the addresses given by them. Proclamations were then issued and all the accused surrendered themselves before the Chief Presidency Magistrate who transferred the case to the Third Presidency Magistrate for trial. The Third Presidency Magistrate acquitted all the accused on the ground of jurisdiction :

Held, that as all the accused surrendered before the Court, the Court had abundant jurisdiction to proceed with trial of the accused and the acquittal was, therefore, wrong in law. (C. C. Ghose and Panckridge JJ.) Superintendent & Remembrancer of Legal Affairs, Bengal v. Raisallee,

AIR 1933 Cal 145=60 C 44=Ind Rul (1933) Cal 477 =143 I C 774=34 Cr L J 631.

——Complaint under Workman's Breach of Contract Act — Magistrate who has jurisdiction to try — See Workman's Breach of Contract Act XIII of 1859, S. 1.

11 Cr L J 380 (Lah).

——Offence under S. 164, Assam Labour and Emigration Act, 1901 — Place where inducement to depart was given confers jurisdiction to Court — See Assam Labour and Emigration Act (VI of 1901), S. 164.

11 Cr L J 143 (Cal).

5. Venue for trial of offence—

(l) Receiving stolen property.

——Receiving stolen property.

When property alleged to be stolen is seized in a place beyond the jurisdiction of the Mysore Court, the burden of proving that it was received within the jurisdiction lies on the prosecution — In the absence of such proof the

CRIMINAL P. C. (V of 1898), S. 177 — 5. Venue for trial of offence—(l) Receiving stolen property

Court has no jurisdiction to try the case. (Nanjundayya O. C. J. and Chandrasekhara Aiyar J.) Thimmareddy v. Govt. of Mysore,

12 M C C R 96=9 Cr L J 334.

5. Venue for trial of offence—

(m) Sedition.

——Offences under Ss. 124A and 153A— Place of publication.

In a prosecution for offences under Ss. 124A and 153A, Penal Code, for articles written in a news-paper the fact that certain persons received the news-paper in Bombay is sufficient to give jurisdiction to the Chief Presidency Magistrate Bombay to try the case. The mere fact that the persons are servants of Government who received the news-paper as its agent, cannot in law render their evidence inadmissible on the question of publication. (Chandavarkar and Heaton JJ.) Emperor v. Tribhuvandas P. Mangrolevala,

10 Bom L R 801=33 Bom 77= 1 I C 641 = 8 Cr L J 272.

5. Venue for trial of offence —

(n) Theft.

——Jurisdiction—Appeal—Bhatinda State — Govt. Notifications Nos. 515 and 516 of 1913.

A theft was alleged to have been committed in the goods shed of Bhatinda Railway station. The case was tried by the first class Magistrate Ferozepore and on conviction the accused appealed to the Sessions Court where the question of jurisdiction was raised and a reference was made to the High Court. Held that although according to the Government Notification No. 516 the courts of Hissar and Ferozepore have concurrent jurisdiction in the station of Bhatinda, for the sake of convenience, the courts of Ferozepore should exercise jurisdiction at that place.

But the notification provides only for the jurisdiction of the Magistrate and not for the jurisdiction of the appellate court for which G. O. No. 515 I. B. provides that all appeals from such cases will lie to the Political agent for the Phulkian States and Bhawalpur. (Johnstone J.) Emperor v. Ramlal,

AIR 1914 Lah 181=7 P R 1914 Cr = 141 P L R I914 =24 I C 958=15 Cr L J 550.

6. Transfer of territory from one State to another.

——Transfer of territory to another State — Offence committed at a place which at the time of commission formed part of Madras State but at the time of charge-sheet formed former part of Mysore State —Jurisdiction of Mysore Court to proceed with the case — See Provinces and States (Absorption of Enclaves) Order (1950), Cl. 3.

AIR 1951 Mys 115=ILR (1951) Mys 452= 52 Cr L J 1490.

——Place of offence—Transferred to an independent state —Jurisdiction.

Subsequent to the commission of an offence, the place where the offence had been committed was transferred to the Native State of Benares. The accused lived in British territory since the commission of the crime. Held, that the Sessions Court of British India had jurisdiction to try the offence. 33 All 578, 34 All 118, Rel. on. The judicial power of every independent state extends to the punishment of all offences against the Municipal laws of the state by whomsoever committed within the territory, also to the punishment of all such offences by its subjects wheresoever committed. The jurisdiction of the Mofussil Courts depends upon the offence having been committed within their local limits. 7 Cal 523, rel. (Knox J.) Emperor v. Ganga,

34 All 451=9 A L J 696=15 I C 991=13 Cr L J 575

CRIMINAL P. C. (V of 1898), S. 177— 6. Transfer of territory from one State to another

——Venue—Offence committed in British India—Accused committed — Place of offence transferred to Native State —Effect—Cr. P. Code (Act V of 1898), S. 435.

Where the place of offence which was once a British territory was transferred to a Native State after commitment to the Sessions in British India and the High Court transferred the case to the Native State but the Sessions Judge held that he had no jurisdiction to try the case, Held by the High Court that the Sessions Judge in British India had jurisdiction, that the case was properly transferred to the Judge of the Native State and that the High Court could interfere in revision with an order of a Sessions Judge refusing to exercise jurisdiction: 33 All 578 Foll. 1 Bom 367 Dist. (Karamat Hussain and Chamier JJ.) Emperor v. Ram Naresh Singh,

34 All 118=13 I C 921=9 A L J 51=13 Cr L J 169.

——Appeal — Forum — Transfer of territory to Foreign state.

An appeal from a conviction for an offence committed within the family domains of Maharaja of Benares was made to the Sessions Judge at Mirzapore who heard it on the 31st March 1911. The Benares State came into existence on the 1st April 1911 and the place of offence was transferred to that state. On a reference the High Court held that the order was perfectly valid. (Tudball J.) Emperor v. Sahib Din,

8 A L J 705=11 I C 1006=12 Cr L J 470.

——Ss. 177 and 188 — Offence committed within British India—Trial held in British India — Subsequent transfer of territory of Native State does not effect jurisdiction.

Where after the filing of an appeal to a Sessions Judge against a conviction for an offence committed within British India, the territory including the place where the offence had been committed was transferred to a native state, the Sessions Judge had none the less jurisdiction to hear the appeal since the offence was committed within British India. (Richards C. J. and Tudball J.) Mahabir v. Emperor,

33 All 578=8 A L J 630=11 I C 585=12 Cr L J 401.

7. Transfer of area to another district.

——Ss. 177, 531—Magistrate taking cognizance of offence committed within limits of his jurisdiction and committing accused after enquiry — Locality of offence subsequently transferred to other District— Want of jurisdiction, whether ground for setting aside of order of commitment.

Where a Magistrate takes cognizance of an offence committed within the local limits of his territorial jurisdiction and commits the accused to Sessions after enquiry, the fact that the locality in which the offence was committed is subsequently transferred to another District, does not oust the jurisdiction of the Magistrate, and render the commitment invalid and the Sessions Judge also is not deprived of the jurisdiction to dispose of the case. Even if it be held that the Committing Magistrate had no territorial jurisdiction at the time of the commitment and it were considered that he had, on that account, no jurisdiction to make the commitment, such want of jurisdiction would not be a good ground for setting aside the order of commitment, according to S. 531, Criminal P. C. (Jack and Khundkar JJ.) Emperor v. Sayeruddin Pramanik,

AIR 1939 Cal 159 = ILR (1938) 2 Cal 357 = 11 R C 618=179 I C 805=40 Cr L J 270.

8. Effect of trial at wrong place.

——Ss. 177, 531 — Trial in wrong Court — Conviction, when can be set aside—Policy of the Code.

Section 177, Criminal P. C., only provides for the ordinary place of inquiry and trial and may be read along with S. 531, the result being that a conviction

CRIMINAL P. C. (V of 1898), S. 177 — 8. Effect of trial at wrong place

cannot be set aside merely on the ground that the trial has taken place in a wrong District but the party aggrieved is entitled to have the conviction set aside if he shows that "such error has, in fact, occasioned a failure of justice." The policy of the Code as shown by Ss. 531 and 538 is to uphold in most cases, the orders passed by the Criminal Court which lacked local jurisdiction or which had committed illegalities or irregularities unless failure of justice has been occasioned or is likely to be occasioned thereby. (Dhavle and Agarwala JJ.) Acharaja Singh v. Emperor,

AIR 1936 Pat 410=2 B R 629=15 Pat 418= 163 I C 518=1936 Cr C 642=17 Pat L T 543 = 1936 Pat W N 515.

——Rectification.

Where an offence is being inquired into and tried by a Court contrary to the provisions of S. 177, the error can be rectified by the High Court by transfer to the Court having jurisdiction. The High Court is not bound to quash the proceedings. 23 O. C. 87 Diss. (Dalal J. C.) Mubarak Ali v. Abdul Haq,

AIR 1925 Oudh 490=85 I C 721=26 Cr L J 577.

——Ss. 531, 177, 179, 180, 181, 183 — Ss. 177, 179, 180, 181, 183 must be read together with S. 531. (Subramania Iyer and Miller JJ.) Public Prosecutor v. Doraiswamy Mudali,

1 M L T 345=30 Mad 94=4 Cr L J 500.

9. Committal by or to wrong Court.

——Ss. 177, 179 and 531— Offence outside Madras— Enquiry by Presidency Magistrate — Commitment to High Court— Transfer of case to its own file — Letters Patent (Mad.), cl. 24.

The policy of the Cr. P. Code as shown by Ss. 531 to 538 is to uphold, in most cases, orders passed by a criminal court which was lacking local jurisdiction unless failure of justice has been occasioned. Where commitment is made to the High Court of a case over which the Sessions Court of a division has local jurisdiction the High Court can, on the grounds of expediency and convenience direct the trial to proceed in the High Court. Per Sadasiva Aiyar J. — The High Court in its original criminal jurisdiction, has power to try cases committed to it by the Mofussil Magistracy, and the commitment is not void by reason of the fact that a Sessions Court in the Mofusil has local jurisdiction in respect of the offence in respect of which the committal is made. 36 Mad. 387, Dist. (Sadasiva Aiyar and Spencer JJ.) Ganapathy Chetty In re,

AIR 1920 Mad 824=37 M L J 60=42 Mad 791 = 26 M L T 64=10 L W 263 = 51 I C 468 = 1919 M W N 808=20 Cr L J 484.

——Ss. 177, 531 — Commitment to a wrong Court — Legality of.

A commitment to a wrong Court is an illegality, but a commitment by a wrong Court is almost an irregularity. 9 All 191 P. C., Ref. to. (Sundara Iyer and Spencer JJ.) Assistant Sessions Judge of North Arcot v. Ramammal,

36 Mad 387=10 M L T 563 =(1912) M W N 3 = 22 M L J 141=13 I C 275=13 Cr L J 35.

—S. 178.

——Ss. 178 to 188—Jurisdiction of British Indian Courts —Effect of S. 188 on.

The effect of S. 188 is to give jurisdiction to the British Indian Courts in cases which cannot come within their jurisdiction under Ss. 178, 187. Even the proviso to the section does not in any way restrict the special or extended jurisdiction conferred on such courts by Ss. 178 to 184, notwithstanding anything to the contrary laid down in

CRIMINAL P. C. (V of 1898), S. 178

S. 177. (Sadasiva Iyer and Spencer JJ.) Assistant Sessions Judge, North Arcot v. Ramaswami Asari,
AIR 1914 Mad 330=38 Mad 779 = 26 M L J 235=1 L W 302=(1914) M W N 324=22 I C 991= 15 Cr L J 207.

—S. 179.

See also ibid, S. 531.

SYNOPSIS

1. Applicability and scope.
2. Consequence forming part of offence, what is.
3. Criminal breach of trust or criminal misappropriation.
   (a) Application of S. 179 not excluded.
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4. Nature of 'consequence.'
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   (b) Consequence must be ingredient of offence.
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5. Offences committed outside India.

1. Applicability and scope.

——Applicability — Conspiracy hatched at one place and kidnapping in pursuance of it committed at another—Place of trial—See Criminal P. C. (1898), S. 180.
1951 R D (H C) 48.

——Sale of girl outside jurisdiction of Court—Court cannot try offence under S. 372 — But if deceased was aware of the fact that the girl has been kidnapped or abducted and has been enticed away from her home and he confines her with a view to sell he can be tried under S. 368 in the Court within whose jurisdiction original abduction took place—See Penal Code (1860), S. 372.
1948 A M L J 40.

——Applicability — Accused charged under S. 5, Child Marriage Restraint Act, 1929 — Jurisdiction where tilak ceremony was performed.

Where the accused who performed tilak ceremony in connection with the child marriage are charged for the offence of performing, conducting or directing the child marriage under S. 5, Child Marriage Restraint Act, Ss. 179 and 182, Criminal P. C., do not apply and the case is not triable in the place where the tilak ceremony took place inasmuch as for the purpose of S. 5, Child Marriage Restraint Act, it is only the marriage ceremony that has to be considered and it is immaterial where or when by whom the tilak ceremony was performed. (King, J.) Matuk Deo Narain Singh v. Vinayak Prasad,
A I R 1934 All 829 (1) = 1934 A L J 681=7 R A 59 (1)=4 A W R 261=57 All 83=150 I C 993=35 Cr L J 1175 (1).

——What S. 179 provides is that when a person is accused of the commission of any offence by reason of two things: by reason, first, of anything which has been done, and secondly of any consequence which has ensued, then jurisdiction is conferred on the Court the act has been done or the consequence has ensued. The offence therefore must be charged by reason of the two things, the act done and the consequence which ensued; and the consequence therefore forms the necessary part of the offence. S. 179 does not refer to an offence charged by reason of an act done, from which act any consequence has ensued. (Beaumont C. J., Madgavkar and Baker, JJ.) Jivandas Savchand, In re,
A I R 1930 Bom 490=1930 Cr C 1026=32 Bom L R 1195=55 Bom 59=32 Cr L J 331 (FB).

CRIMINAL P. C. (V of 1898), S. 179—1. Applicability and scope

——Scope.

——S. 179 applies to a case where the offence is completed by reason of a consequence ensuing within the local limits of another jurisdiction as also to a case where the fact of a consequence ensuing in another jurisdiction is the cause of the offender being accused of the offence. (William Clark, C. J., Reid and Chevis, JJ.) Ishar Das v. Emperor,
18 P W R 1908=8 Cr L J 75.

——Ss. 531, 177, 179 to 181 and 183 — Sections to be read together—See Criminal P. C., 1898, S. 531.
4 Cr L J 500 (Mad).

2. Consequence forming part of offence, what is.

——Offence of cheating is triable where complainant is deceived. (Pollock, J.) Ibrahim v. Kumud Chandra,
1941 Nag L J 646.

——Complaint for cheating, in Court at A—Accused arrested at B on issue of summons—Complaint dismissed and accused acquitted—Accused lodging complaint for defamation in Court at B—Court at B, if can try it.

Section 179, Criminal P. C. applies only to a case where a person is charged with an offence not only by reason of some act committed by him, but also by reason of some consequence which has ensued from the act. In the absence of any one of these two ingredients, the section would be wholly inapplicable. If the consequence is such that even if it had not taken place, the offence would have been complete, S. 179 would have no application.

A complaint was filed against a person for cheating in a Court at A. On an issue of summons for arrest, the accused was arrested at B. On the dismissal of the complaint and his acquittal, the accused lodged a complaint for defamation against his complainant in Court at B :

Held, that the Court at B had no jurisdiction to try the offence of defamation, it being complete as soon as the complaint of cheating was lodged in Court at A. The arrest at B was not such a consequence as is contemplated by S. 179, Criminal P. C. (Mulla, J.) Mohammad Abdul Latif v. Ahmad Abdul,
A I R 1938 All 632=11 R A 325 = 1938 A L J 969= 1938 A W R 686=178 I C 713=40 Cr L J 128.

——Contract between accused and partner of firm at one place—Firm situated in another place—Offence of cheating ensuing—Jurisdiction.

Accused entered into a contract of purchase at one place, with a partner of a certain firm which was situated at another place. The accused committed an offence of cheating in respect of this contract:

Held, that it was the firm that was cheated and consequently, under S. 179, Criminal P. C., the Court of the place where the firm was situated was competent to entertain the complaint against the accused in respect of the offence of cheating. (Niamatullah, J.) Emperor v. Atma Ram,
A I R 1934 All 846 = 7 R A 734 = 4 A W R 246 = 154 I C 315=36 Cr L J 490.

——A owed B a certain sum of money. He sent a letter insured for Rs. 400 to B through the Post Office addressed to a place in the Gujrat District, intending to use the receipt given to the Post Office by B as proof of discharge of the debt. The letter was without money. A filed a complaint against B in the Court of a Magistrate at Gujrat under S. 420, Penal Code :

CRIMINAL P.C. (V of 1898), S. 179—2. Consequence forming part of offence, what is

Held, that the Gujrat Court had jurisdiction under S. 179, if not also under S. 177. (Coldstream, J.) Narain Das v. Prem Chand,

132 I C 864=32 P L R 6=Ind Rul (1931) Lah 704=32 Cr L J 996.

——Cheating — Jurisdiction of Court — Demand drafts obtained by false pretence from complainant's agent at A —Drafts ultimately honoured by complainant at B—Jurisdiction of Court of A to try offence.

The complainants who carried on business at Karachi had a guarantee broker at Sukkur who secured business for them. The accused, a merchant at Sukkur, induced the broker under false pretence to issue some drafts payable to the accused by the complainants, and negotiated them in the bazar and received the money. The demand drafts issued by the broker were, in the ordinary course, honoured by the complainants at Karachi. There was nothing to show that the drafts were payable at Karachi nor was there anything to show that any subsequent assent of the complainants at Karachi was required to give validity to the drafts. The accused was prosecuted at Karachi:

Held, that the handing over of the drafts by the guarantee broker for negotiation in the bazar was equal to payment, and the consequence of the alleged false pretences was not the subsequent honouring by the complainants at Karachi of the drafts drawn by their guarantee broker, but the handing over of those drafts by the guarantee broker. The subsequent honouring of his drafts by the complainants was not a consequence forming part and parcel of the offence of cheating, and was something done subsequent to the completion of the alleged offence, and, therefore, outside the purview of S. 179, Criminal P. C., and the Karachi Court had, therefore, no jurisdiction to try the offence. (Rupchand and Milne, A. J. Cs.) Gobindram Dowlatram v. Emperor,

A I R 1931 Sind 94 = 27 Sind L R 201 = Ind Rul (1931) Sind 93=132 I C 477=32 Cr L J 924.

——Composite acts.

Where the accused styling himself as "The Director of Mesmerism" posted three V. P. parcels containing a piece of paper purporting to convey the first lesson in mesmerism, the parcels were received by the addressees and value paid to the post office, the act of deceiving and the act of inducing delivery of property were composite acts which began with the delivery of the parcels to the post office for posting. The posting was an essential part of the offence and so both under S. 179 and S. 182 (2) the Court in whose local area the posting was made had jurisdiction to try the case. A I R 1923 Mad 666, Appr.; 38 Mad 639, Not Appr.; A I R 1927 Mad 544, Diss. from. (Mirza and Broomfield, JJ.) Gafur Karimbax v. Emperor,

A I R 1930 Bom 358=1930 Cr C 790=127 I C 177 = 32 Bom L R 785=31 Cr L J 1155.

——V. P. Parcels.

Accused sent by V. P. P. certain boxes purporting to contain tea at the order of A to Hyderabad. A paid the value payable amount and took delivery of the boxes but on opening found them to contain merely sawdust.

Held, the delivery contemplated by S. 415, Penal Code, is 'delivery to any person', a phrase which will include even an agent. The deceit and the delivery in consequence of the deceit were complete when the money was handed over to the Post Office and the subsequent delivery by the Post Office to accused was not a necessary ingredient of the offence and therefore the offence was completely committed in Hyderabad and the Madras Court had

CRIMINAL P. C. (V of 1898), S. 179—2. Consequence forming part of offence, what is

therefore no jurisdiction. (Wallace, J.) M. A. Kaleek v. Emperor,

A I R 1927 Mad 544=101 I C 484=1927 M W N 221 =8 A I Cr R 69=52 M L J 511=28 Cr L J 452.

——Either place.

If the defamatory letter is posted in Madras with a view to be read in Tinnevelly, the offence of defamation is triable either in Madras or in Tinnevelly. (Spencer, J.) Krishnamurthi v. Parasurama,

A I R 1923 Mad 666=44 M L J 648 = 72 I C 69=32 M L T 164=24 Cr L J 309.

——Ss. 179 and 181—Place of trial is place of offence.

Where the accused, a merchant carrying on business at Calcutta ordered goods from the complainant at Delhi on condition that the goods were to be delivered in Calcutta and payment was to be made in Delhi and the accused disposed of the goods in Calcutta without paying for them.

Held, that the offence of cheating or criminal breach of trust, whoever was committed in Calcutta and the Delhi Court had no jurisdiction to entertain a complaint in respect of those offences against the accused. (Shadi Lal, C. J.) Abdul Haq v. Emperor,

69 I C 631=23 Cr L J 743 (2) (Lah).

——Cheating—Offence is triable, where cheating is committed.

In cases of cheating, there must be an intention to cause wrongful loss or wrongful gain but it is not essential that loss should be caused. It is the Court within whose jurisdiction the cheating was committed and not where loss ensued that should determine the forum of trial. Cases of criminal misappropriation distinguished. (Campbell, J.) Raghbir Saran v. Kurakshetra Motor Service Co.,

A I R 1923 Lah 90=67 I C 623=23 Cr L J 447.

——S. 179—Cheating—Jurisdiction.

A trader in Salem (Madras) deceived a trader in Dhulia (Bombay) by making him believe that he (the accused) was buying for him clean ground-nut oil when in reality he was buying a mixture of ground-nut and rock oil and induced the Dhulia trader to pay the price as for the clean oil.

Held that the complainant was deceived in Dhulia (Bombay) and the Court at Dhulia had jurisdiction to try the case. (Heaton and Shah JJ.) Jamnadas Vasanji v. Emperor

AIR 1915 Bom 46 = 17 Bom L R 389 = 29 I C 65= 16 Cr L J 433.

——Offence partly committed in one place.

Where the complainant ordered and received a consignment of matches which were damaged from Calcutta, and for which he had paid money in advance by currency notes from the Moradabad Post Office, and afterwards brought in a complaint against the accused for criminal breach of trust and cheating:

Held, that the former offence was committed in Calcutta and was not triable at Moradabad but that the entire offence of cheating was completed at Moradabad, and was accordingly triable at Moradabad. (Piggott J.) Yusuf Ali v. Whaajud-Din

AIR 1914 All 373 = 26 I C 167 = 12 A L J 1022 = 15 Cr L J 719.

3. Criminal breach of trust or criminal misappropriation

(a) Application of S. 179 not excluded.

(b) Section 181 (2) applies.

CRIMINAL P. C. (V of 1898), S. 179

3. Criminal breach of trust or criminal misappropriation—(a) Application of S. 179 not excluded

——Criminal breach of trust — Failure to account or to return property as part of offence.

Where the failure of the accused to account for the property or to return it to Peshawar does not constitute any part of the offence, but the offence is already complete, when he committed criminal breach of trust in Delhi, the case is triable at Delhi alone. (Almond J. C.) Sultan Chand v. Yogindra Nath Raz

AIR 1944 Pesh 25 = 17 R Pesh 38 = 214 I C 230 = 45 Cr L J 749.

——Breach of trust — Residence of complainant — Whether decides jurisdiction.

Section 179, Criminal P. C., cannot be extended to hold that a trial for criminal breach of trust committed in Calcutta can be held in Jhansi merely because the owner happens to reside in Jhansi. The criterion of the residence of the person who suffers wrongful loss is not a correct criterion. (Bennet J.) Jagannath v. Emperor

AIR 1934 All 127=6 R A 901=3 A W R 494=149 I C 402=35 Cr L J 934.

——The provisions under Chap. 15A are not separately independent of one another so that if one provision applied, the other would not so apply; and consequently merely because there are certain provisions with regard to place of inquiry, in a case of criminal breach of trust under S. 181 (2) it does not follow that S. 179 would not apply to that enquiry. S. 179 does cover that offence as also cheating under S. 408, Penal Code : 19 All 111, Rel. on; 32 All 397; 35 All 29; A I R 1924 All 77, Ref.; 34 All 487, Dist. (Dalal J.) S. F. Rich v. Emperor

AIR 1930 All 449=1930 A L J 849=1930 Cr C 669=125 I C 589=31 Cr L J 865.

[Overruled in A I R 1934 All 499 = 35 Cr L J 982 (FB)]

——A Court in whose jurisdiction the accused has neither to submit account nor to pay to the complainant the profits of the firm, cannot try the offence of misappropriation of the partnership funds. (Banerji J.) Behari Lal v. Gangadin

AIR 1927 All 69=97 I C 368=27 Cr L J 1104.

——Section 181 (2) does not in any way modify the provision of S. 179. (Dalal J.) Md. Rashid Khan v. Emperor

AIR 1926 All 466 = 96 I C 656 = 7 L R A Cr 114= 27 Cr L J 992.

——The offence of criminal breach of trust with the act of conversion and the intention to cause wrongful gain or wrongful loss, the intention can only be formed or at least can only be proved to have been formed at the place where the conversion takes place. For the purposes of S. 179, it is immaterial where the wrongful loss actually takes place, and indeed whether any such loss actually does take place or not : (A I R 1922 Bom 39, Diss. 38 Mad 639, Foll.) (Hallifax A. J. C.) Banerji v. Patnis

AIR 1924 Nag 253 = 81 I C 538 = 20 N L R 72 = 25 Cr L J 922.

——The accused who was carrying on business at Calcutta ordered certain goods through complainant, a commission agent at Delhi. The goods were to be delivered at Calcutta and payment was to be made at Delhi. The goods arrived in Calcutta and the accused was allowed to take delivery on condition that he would hold them in trust till payment but he disposed of them before making the payment :

CRIMINAL P. C. (V of 1898), S. 179 — 3. Criminal breach of trust or criminal misappropriation — (a) Application of S. 179 not excluded

Held, that the offence was complete as soon as he misappropriated the goods by selling them without authority at Calcutta. And the fact that he did not first pay at Delhi as agreed upon did not affect the case. The loss at Delhi was not a "consequence" such as is referred to in S. 179 of the Code : 7 P R 1910 Cr; 34 A 482, Ref. (Shadi Lal C. J.) Abdul Haq v. Emperor

AIR 1924 Lah 353=69 I C 631.

——'Consequence' bears only a grammatical meaning and is not confined to a necessary ingredient of the offence.

S. 181 (2) does not restrict the provisions of S. 179 of the same Code. One of the consequences of criminal breach of trust, if committed by an agent, would be loss to the person to whom, the property entrusted to the agent, belonged, and therefore as the complainant would be entitled to get the proceeds of the articles, sent to the agent, paid to him; if the proceeds were not paid to him, loss would be incurred at the place where he lives and therefore the Court would have jurisdiction. S. 181 (2) in no way restricts the provisions S. 179. There is nothing, in that section which prevents a Court within whose local limits any consequences of an offence have ensued, having jurisdiction to try the offence.

The word "consequence" in S. 179 bears its ordinary grammatical meaning and is not restricted to meaning a consequence which is a necessary ingredient of the offence. (Macleod C. J. and Kanga J.) Emperor v. Ramratan Chunilal

AIR 1922 Bom 39 = 46 Bom 641 = 65 I C 637 = 24 Bom L R 46=23 Cr L J 173.

[Overruled in A I R 1930 Bom 490 = 32 Cr L J 331 (FB).]

——Ss. 179 and 181 (2) — Place of trial—Money due at M—Misappropriation at A—Former Court can try.

Where the bill collector of a firm carrying on business at M, misappropriated money collected on behalf of the firm, at a place in the Dt. A he can be tried at the Court in the Dt. M. (Mears C. J., Rafique and Ryves JJ.) Sheo Shankar v. Mohan Sarup

AIR 1921 All 12 = 19 A L J 69=60 I C 996=L R 2 A (Cr) 15=22 Cr L I 308 (FB).

——Ss. 179 and 181 (2) — Criminal breach of trust — Jurisdiction.

The gist of the offence of criminal breach of trust is the dishonest misappropriation, conversion or disposal of the property. The loss to the complainant is a consequence of the breach of trust and not necessarily an integral part of it. Inasmuch as the money had been received, retained and misappropriated at Rangoon, Rangoon Courts alone had jurisdiction to try the case. (Pratt J. C.) Abdulsalam v. Ramnewal Singh

AIR 1920 Upp Bur 39=(1919) 3 U B R 172=54 I C 677=21 Cr L J 149.

——Criminal breach of trust.

The loss arising from criminal breach of trust is a consequence completing the offence. A machine which was bought with A's money was entrusted to B, both residents of Cawnpore. The machine subsequently was taken to Madras where A died and B misappropriated it. The Cawnpore Court had jurisdiction to try the offence. (Rafique J.) George Langridge v. Grace Atkins

10 A L J 431=35 All 29=17 I C 792=13 Cr L J 856

[Overruled in AIR 1934 All 499=35 CrLJ 982 (FB).]

——Consequence — Penal Code, S. 408—Criminal breach of trust—Jurisdiction.

"Consequence" in S. 179 of the Criminal P. C. means a consequence which forms a part and parcel of the offence

CRIMINAL P. C. (V of 1898), S. 179 — 3. Criminal breach of trust or criminal misappropriation — (a) Application of S. 179 not excluded

and not something which is not the direct result of the act of offenders as to form no part of that offence: 5 A L J 333, Ref. If an offence under S. 408 is committed in a branch of a firm the Court at the head office of the firm has no jurisdiction to try it: 26 C 746; 19 A 111, Ref. (Karamat Husain J.) Ganeshi Lal v. Nand Kishore,

34 All 487=10 A L J 45=15 I C 319=13 Cr L J 479.

3. Criminal breach of trust or criminal misappropriation—(b) S. 181 (2) applies.

——Ss. 179 and 181 (2) — Charge of criminal misappropriation—Venue of trial.

Where the charge is of non-accounting and there is no specific allegation of misappropriation in any particular place the venue of the trial will be the place where the accounting has got to be done and has not been done.

Where the accused who was constituted an agent of the complainant for the purpose of making collections regarding the distribution of a certain picture in the State of Travancore and was to remit the sums to the complainant in Coimbatore district and the accused failed to remit the amounts and was not accounting for the same:

'Held' that the Coimbatore Court had jurisdiction to entertain the complaint regarding the misappropriation of the amounts. (Ramaswami J.) Arunachala Goundan, S. v. K. S. Akhileshwara Ayyar,

AIR 1952 Mad 158=1951-2 Mad L J 627=1951 Mad W N 851=1952 All W R (Sup) 16 = 1951 Mad W N (Cr) 271=1952 Cr L J 308.

——Ss. 179, 181 (2) — Criminal misappropriation and criminal breach of trust.

(Per Ram Labhaya J.) — Section 179 can apply only where the act itself and its consequence combined together constitute an offence which is the subject-matter of inquiry or trial. Section 179 has no application to cases of criminal breach of trust. They are provided for by S. 181, Cl. (2). There being a specific provision for the offence of criminal breach of trust, the general provision contained in S. 179 should not apply. Case law discussed. (Thadani C. J., Ram Labhaya and Deka JJ.) Bangshilal v. Routmal

AIR 1951 Assam 131 = I L R (1952) 4 Assam 49 = 52 Cr L J 1388 (FB).

——Ss. 179, 181—Court at place where failure to account or dispose of property as per contract takes place, whether has jurisdiction to try offence under S. 405, Penal Code.

Neither failure to account nor breach of contract, however dishonest, is actually and in itself the offence which S. 405 of the I. P. C. defines, but merely evidence of that offence. Section 181 (2), Criminal P. C., does not, therefore, confer jurisdiction on a Court at a place where the accused has failed to account or to dispose of property as per contract. (Lodge and Blagden JJ.) Daityari Tripatty v. Subodh Chandra Choudhury

AIR 1942 Cal 575 = 46 C W N 952 = 15 R C 484 = ILR (1942) 2 Cal 507=204 I C 26=44 Cr L J 132.

——Ss. 179, 181 (2)—Applicability of, to criminal breach of trust—Penal Code (Act XLV of 1860), S. 405.

Section 179, Criminal P. C., applies only to those offences which by their very definition, consist of an act and its consequence (e. g. culpable homicide which, omitting matters immaterial for this purpose, consists in "causing death"), and not, therefore, to criminal breach of trust. A loss to anybody forms no part of the statutory definition of that offence. (Lodge and Blagden JJ.) Daityari Tripatty v. Subodh Chandra Choudhury.

AIR 1942 Cal 575=46 C W N 952=15 R C 484=ILR (1942) 2 Cal 507=204 I C 26=44 Cr L J 132.

——Ss. 179, 181—Offence of criminal breach of trust.

CRIMINAL P. C. (V of 1898), S. 179 — 3. Criminal breach of trust or criminal misappropriation — (b) S. 181 (2) applies

The offence of criminal breach of trust is not triable at a place where neither the entrustment nor any positive act of conversion of the monies entrusted took place because an offence of criminal breach of trust always consists in an act and not in an omission. (Lodge and Blagden JJ.) Daityari Tripatty v. Subodh Chandra Choudhury.

AIR 1942 Cal 575 = 46 C W N 952=I L R (1942) 2 Cal 507=15 R C 484=204 I C 26=44 Cr L J 132.

——Ss. 179, 181 (2)—Applicability of S. 179 to criminal breach of trust.

Section 179, Criminal P. C., has no application to the offence of criminal breach of trust which is governed by sub s. (2) of S. 181. (Khundkar and Edgley JJ.) S. Huda v. Ali Hussain M. Iqbal.

A I R 1940 Cal 367 = 13 R C 128 = 189 I C 876= 41 Cr L J 812.

——Ss. 179, 181 (b) — Criminal breach of trust—Loss, if necessary ingredient of offence—Money agreed to be sent to S dishonestly misappropriated at L — Jurisdiction to try offence. AIR 1929 Sind 30=30 Cr L J 249, Overruled.

The offence of criminal breach of trust consists in a person dishonestly misappropriating or converting entrusted property to his own use or dishonestly using or disposing of that property in violation of any direction of law or of any legal contract, and it is the dishonest misappropriation or conversion or user or disposal as the case may be that is the essence of the offence. If money is to be sent to Sukkur which is dishonestly misappropriated or converted or used or disposed of within the meaning of S. 405, Penal Code, at Lucknow and is not sent to Sukkur it cannot be said that it was dishonestly misappropriated or converted or used or disposed of at Sukkur nor does S. 43, Penal Code, make any difference to the case. It may be said that the failure to send it to Sukkur is evidence of dishonest misappropriation or conversion or user or disposal at Lucknow, but a jurisdiction is not to be determined by the place where evidence is to be found but by the place where the offence is committed. Jurisdiction, so far as the offence of criminal breach of trust is concerned, is quite clearly and specifically provided for in S. 181 (2), Criminal P. C., and not by S. 179. The Sukkur Court in this case has, therefore, no jurisdiction to try the offence. A I R 1929 Sind 30=30 Cr L J 249, Overruled. (Davis J. C., Rupchand, Mehta and Havelivala, A. J. Cs.) Mukhi Tirathdas v. Jethand Matvalomal.

A I R 1937 Sind 68=9 R S 222=31 S L R 123=168 I C 89=38 Cr L J 512 (FB).

——Ss. 179, 181 (2), 531—Penal Code (Act XLV of 1860), S. 408 — Criminal misappropriation — Proper place for trial—Place where loss ensued to employer — Trial by wrong Court — Applicability of S. 531—Criminal misappropriation in Shan States — Trial in Mandalay — Federated Shan States Laws and Criminal Justice Order, 1926, R. 4.

The accused, a clerk employed by a company of Mandalay, was entrusted with certain bills and promissory notes of the value of Rs. 27,535 for the purpose of proceeding with them to the Shan States (where the debtors resided) and for collecting the amounts due thereunder and remitting the same to the company. The accused remitted certain amounts and on his return to Mandalay, admitted that he had used the residue of the proceeds, over Rs. 10,000, out of the amounts collected for gambling and had lost the whole of it. He was tried by the Special Magistrate of Mandalay and convicted under S. 408, Penal Code:

Held (i), that the offence of criminal misappropriation was complete as soon as the money was misappropriated

CRIMINAL P. C. (V of 1898), S 179 — 3. Criminal breach of trust or criminal misappropriation — (b) S. 181 (2) applies

in the Shan States and S. 179, Criminal P. C., had no application to the case as it applies only to cases where the consequence which ensues is an essential ingredient of the offence ;

(ii) that the case was governed by S. 181 (2), Criminal P. C., and the Special Magistrate of Mandalay had no jurisdiction to entertain the charge or to try the accused;

(iii) that S. 531, Criminal P. C., however, applied to the case by reason of R. 4 of the Federated Shan States Laws and Criminal Justice Order, 1926, and as there had not been any failure of justice, the conviction could not be set aside.

Section 179, Criminal P. C. is not applicable to an offence under S. 408, Penal Code, inasmuch as the consequence of loss which ensues in such cases to the master or employer is not an essential ingredient of the offence. (Arthen Page, C. J. and Dunkley J.) Ali Mohamed Kassim v. Emperor.

AIR 1931 Rang 164 = 9 Rang 338 = Ind Rul (1931) Rang 273=134 I C 209=32 Cr L J 1120.

——Although loss to the principal or employer may be the usual and the normal result of criminal breach of trust, it is neither the necessary ingredient nor even the necessary consequence of the offence of criminal breach of trust. It is the act itself which in law amounts to the the offence apart from any such consequence and therefore the jurisdiction to try an offence of criminal misappropriation or criminal breach of trust is governed by S. 181 (2) and not by S. 179. Further, if there is a further duty enjoined upon the agent or the factor to render accounts at another place, the failure in rendering such accounts or rendering false accounts at such place does not confer jurisdiction under S. 179 upon the Magistrate at latter place. A I R 1922 Bom 39=23 Cr L J 173 and A I R 1930 Bom 358 = 31 Cr L J 1155, Overruled ; 19 All 111 and 35 All 29, Diss. from ; 44 Cal 912 ; 38 Mad 639 and AIR 1925 Cal 613, Ref.; Rex v. Oliphant, (1905) 2 K B 67, Dist.

Per Madgavkar J.— The matter entirely depends upon where the act of criminal misappropriation including dishonest intent is completed as far as the knowledge and belief of complainant go. (Beaumont C. J., Madgavkar and Baker JJ.) Jivandas Savchand, In re.

A I R 1930 Bom 490=32 Bom L R 1195=1930 Cr C 1026=55 Bom 59=32 Cr L J 331 (FB).

——Section 181—Place of accounting.

The accused was employed at L under an agreement to work for a firm at K and had to remit moneys and render periodical accounts to the Head Office of the firm in K. He misappropriated money of the firm while at L.

Held, that K Court had jurisdiction to try the accused.

Per Wild, J. C. — The word "consequences" in S. 179 should be given its ordinary meaning and should not be restricted to mean a consequence which is a necessary ingredient of the offence. The alleged fact that wrongful loss was caused at K which is the headquarters of the firm gave the Court at K jurisdiction to try the case as the loss was a consequence of the offence alleged to have been committed at L within the meaning of S. 179.

Per Aston, A. J. C. —An agent whose duty it is to have certain funds or accounts delivered at a certain place, commits the offence at that place, if he fraudulently misappropriates the funds having omitted to remit them and having omitted to account for them, nd therefore, apart from the provisions of S. 179, S. 181 would apply, the facts complained of amounting to an offence com-

CRIMINAL P. C. (V of 1898), S. 179 — 3. Criminal breach of trust or criminal misappropriation — (b) S. 181 (2) applies

mitted in K. (Wild J. C. and Aston A. J. C.) Gobindram Jeebanmal v. Emperor,

AIR 1928 Sind 166=112 I C 361 = 11 A I Cr R392= 29 Cr L J 1033.

——Place of entrustment of pro-notes for collection.

An accused, an employee in firm of Rangoon, was entrusted with a number of pro-notes and hundis of different values with instruction to proceed up-country (Burma) and collect the amounts due upon them at the various places where the firms concerned were situated, and the accused tendered a final cash account at Rangoon. It was found out that he had misappropriated to his personal expenses a certain sum out of this collections. It was contended that the misappropriation took place in the district and the subject of the offence was the money and not the hundis or pro-notes, and, therefore, Rangoon Courts had no jurisdiction to try the accused for misappropriation.

Held, that the Rangoon Courts had jurisdiction to deal with this matter. The promissory notes were entrusted to the accused in Rangoon and the accused must account for them in Rangoon. (Das J.) Yacoob Ahmad v. V. M. Abdul Ganny,

AIR 1928 Rang 217= 111 I C 860=6 Rang 380 = 29 Cr L I 940.

——Section 181 (2) and not S. 179 applies to a case of criminal breach of trust. (Suhrawardy and Mukerji JJ.) Gunananda Dhone v. Lala Santi Prakash Nandy,

AIR 1925 Cal 613 = 86 I C 213 = 41 C L J 80 = 29 C W N 432=26 Cr L J 725.

——S. 179 does not govern the jurisdiction of a Court to try the offence of criminal misappropriation or of criminal breach of trust for which a special provision is to be found in S. 181 (2). 22 P. R. 1915 (Cr), Foll. (Shadi Lal C. J.) Mahtab Din v. The Crown,

AIR 1924 Lah 663=77 I C 490=25 Cr L J 410.

——Section 179 is controlled in respect of certain offences by S. 181 and no question of convenience or expediency can be considered under S. 185. That section deals only with questions of competency when they are involved in doubt. 44 Cal 598, Foll.

Where the accused was charged under S. 420 and S. 406, I. P. Code. the former triable at Basti as well as at Bombay and the latter triable only at Bombay, the Basti Court was directed to proceed with the trial under S. 420 and to drop so far as that Court was concerned the charge under S. 406 of the Code. (Kanhaiya Lal J.) Girdhar Das v. King-Emperor,

AIR 1924 All 77=75 I C 353= 21 A L J 621=4 L R A Cr 142=24 Cr L J 929.

——Ss. 179 and 181 (2)—Offence under Penal Code, S. 403 —Place of misappropriation or detention of intended payment.

The offence under S. 403, I. P. C , is complete the moment the accused receives or retains the money with a dishonest motive of appropriating it or converting it to his own use, and the failure to return it to the complainant's master at Patna was not an essential ingredient for the offence of mis-appropriation. Section 181 (2) controls S. 179 of Criminal P. C. and there being no allegation that any part of the money was received or retained within the jurisdiction of Patna Court the Sub-Divisional Magistrate Patna had no jurisdiction to entertain the complaint. 21 C. W. N. 573 Foll ; 35 All 29 and 34 All 487, Ref. (Jwala Prasad J.) Gow-Karan Lal v. Sarju Saw,

AIR 1921 Pat 85 = (1921) Pat H C C 31 = 1 Pat L T 200 = 3 U P L R (Pat) 9=56 I C 775= 21 Cr L J 519.

CRIMINAL P. C. (V of 1898), S. 179 — 3. Criminal breach of trust or criminal misappropriation — (b) S. 181 (2) applies

——Offence partly in C. P. and partly in U. P. — Latter courts have jurisdiction.

An agent of a firm at Mirzapur was entrusted with the collection of lac in C. P. He was to send monthly accounts to the firm from there. He failed to account in respect of a sum of Rs. 95,000 and odd when demanded by the Company. Held that a considerable part of the offence was committed at Mirzapur in U. P. and the Mirzapur Court had jurisdiction to try the case. (Tudball, Piggott and Walsh JJ.) Kanhaiya Lal v. Emperor,

L R 2 A (Cr) 28.

——Ss. 179 and 181 (2) and 182—Criminal misappropriation in one district—Retaining it in another—Jurisdiction.

Where criminal misappropriation was committed in one District and the money was retained in another District the accused can be tried in the Court of latter District. (Chitty and Richardson JJ.) Gauranga Sunder Mandal v. Satish Chandra Chaudhuri,

AIR 1918 Cal 110=46 I C 39=19 Cr L J 679.

——Ss. 179 and 181 (2) — Applicability to offence under S. 403, I. P. C.

Section 179 does not in terms apply to a trial for criminal misappropriation (S. 403, I. P. C.) as the offence does not depend on an act done along with consequences arising therefrom but only on the act itself which has been done. (Teunon and Beachcroft JJ.) Simhachalam v. Rati Kanta Laha,

AIR 1917 Cal 381=44 Cal 912 =21 C W N 573 = 25 C L J 451=41 I C 138=18 Cr L J 762.

——Ss. 179 and 181—Criminal breach of trust — Jurisdiction.

Section 179 applies only where the consequence necessary to constitute the offence ensues in some place other than in which the accused's act is done. It is the court within whose jurisdiction the primary loss takes place that can take cognisance of an offence of criminal breach of trust. Where the accused was appointed agent for the sale of the complainant's oil at Nandyal and he was sending accounts to his principal at Madras for some time, but after a certain time left the place of business making away with the money, Held, that the court of the Presidency Magistrate at Madras had no jurisdiction. (Oldfield and Napier JJ.) Krishnamachari v. Shaw Wallace and Co.

AIR 1916 Mad 438 = 39 Mad 576 = 18 M L T 25 = (1915) M W N 418=29 M L J 178 = 29 I C 331=16 Cr L J 491.

——Criminal breach of trust—Jurisdiction.

The Sub-divisional Magistrate of Erode has no jurisdiction under S. 179 to try a case of criminal breach of trust alleged to have been committed by the accused at Bombay to which place they belonged. (Ayling and Hannay JJ.) In re Rambilas,

AIR 1915 Mad 600=38 Mad 639 = 16 M L T 505 = (1914) M W N 894=29 M L J 175= 26 I C 136=15 Cr L J 688.

——Ss. 179, 181 (2) and 190 (c) — Indian Penal Code, Ss. 409 and 477-A—Fabrication of accounts — Criminal breach of trust—Forum of trial—S.179, applies only when a person is accused of the commission of any offence by reason of anything which has been done and of any consequence which has ensued. The offence under S. 477-A, I. P. C., is complete, when accounts are falsified with intent to defraud; and a person accused of the falsification of accounts made in one place cannot be tried in another place on account of any offence by reason of any consequence which has ensued within the meaning of S. 179. But the Magistrate within whose jurisdiction the property embezzled has been received or retained may have jurisdiction under S. 181 (2), to try an offence under S. 409, I. P. C. (criminal breach of trust). (Wallis and Pinhey JJ.) Swaminathan Chettiar v. Annamalai Chettiar,

4 M L T 481=1 I C 796=9 Cr L J 92.

4. Nature of 'consequence'

(a) Consequence need not be ingredient of offence.

(b) Consequence must be ingredient of offence.

(c) Illustrative Cases.

4. Nature of 'Consequence' - (a) Consequence need not be ingredient of offence.

——Accused giving bogus cheque to complainant at M on a Bank at C — Complainant presenting for payment of Bank at F —Cheque dishonoured—Jurisdiction.

Where a person is accused of the commission of any offence by reason, first, of the thing which had been done and secondly of any consequence which had ensued, then jurisdiction is conferred on the Court where the act had been done or where the consequence had ensued.

In payment of certain sums of money due to the complainant, the accused gave him a post-dated bogus cheque at M on a Bank at C. The cheque was presented for payment to a Bank at F, but it was dishonoured as the accused had no account with the Bank at C:

Held, that while the offence of cheating was completed at M where the bogus cheque was drawn, the loss which was incurred by the complainant at F was a necessary and inevitable consequence of the bogus cheque issued by the accused and hence not only were the Courts at M and C, entitled to enquire into the offence of cheating said to have been committed by the accused, but the Criminal Courts at F had also jurisdiction to enquire into the offence. (Nanavutty J.) Madho Surendra Sahai v. Gobardhan Lal

AIR 1933 Oudh 215=10 O W N 239=Ind Rul (1933) Oudh 263=8 Luck 381=144 I C 566=34 Cr L J 785

——The word "consequence" in S. 179 bears its ordinary grammatical meaning and is not to be restricted in its meaning to consequence which is a necessary ingredient of the offence. (Mirza and Broomfield JJ.) Gafur Karimbax v. Emperor.

AIR 1930 Bom 358=1930 Cr C 790=127 I C 177=32 Bom L R 785=31 Cr L J 1155.

[Overruled in A I R 1930 Bom 490 = 32 Cr L J 331 (FB).]

——The word "consequence" in S. 179 is to be understood in its ordinary grammatical meaning and need not be restricted to mean a consequence which is necessary ingredient of the offence.

A company at Karachi employed an agent to sell their goods in the Punjab who committed criminal breach of trust.

Held, that with regard to jurisdiction of Court S. 179 would govern and the Karachi Court would have jurisdiction as "consequence" in its grammatical sense had ensued at Karachi. A I R 1922 Bom 39, Foll. (Percival, J. C. and Aston A. J. C.) Govindsingh v. Emperor,

AIR 1929 Sind 30 = 114 I C 99 = 22 S L R 404=30 Cr L J 249.

[Overruled in AIR 1937 Sind 68=38 Cr L J 512.]

——Illustrations not exhaustive.

The illustrations to the section are not exhaustive and hence it cannot be held that all the consequences prescribed by the legislature in framing the section which confer jurisdiction on the Court are ejusdem generis with

CRIMINAL P. C. (V of 1898), S. 179 — 4. Nature of 'consequence'—(b) Consequence, etc.

the consequences specified in the illustration to the section. (William Clark C. J., Reid and Chevis JJ.), Ishar Das v. Emperor.

18 P W R 1908=8 Cr L J 75.

——Ss. 179 233, 235 and 239—Jurisdiction of Magistrate —Joinder of charges and of accused persons.

On 2-10-1905 A, resident of Lahore presented a forged draft and got it cashed in the Bombay office of the Mercantile Bank of India. Later on 26-10-1905 one B of Amritsar presented a forged draft and got it cashed with the help of A at Multan branch of Punjab National Bank. Both the forged drafts purported to have been signed by one C as the manager of the Amritsar branch of Punjab National Bank and to have been issued by the same. A and B were tried jointly at Lahore.

Held that under S. 179 the Magistrate at Lahore had jurisdiction to try the case for offences under Ss. 379, 420, 426, 467 and 109, Penal Code :

Held further that there was no misjoinder of charges or of accused when the offences formed parts of one transaction. (William Clark C. J., Reid and Chevis JJ.) Ishar Das v. Emperor.

18 P W R 1908=8 Cr L J 75.

4. Nature of 'Consequence'—(b) Consequence must be ingredient of offence

——For the application of S. 179, the consequence should form an ingredient of the offence itself. (Krishnan J. C.) State of V. P. v. Shiva Bahadur Singh

AIR 1951 Vind Pra 17=52 Cr L J 561.

——Offence of using forged document as genuine.

Offence of using forged document as genuine is committed at a place where the document is so used. Where an accused, an applicant before the Public Service Commission at Madras, sends his application along with a forged document, by posting the same at Vizagapatam, the place of offence is Madras where the accused intends to use the document as genuine by placing the same before the Public Service Commission for its consideration unless he withdraws the application before it is considered by the Public Service Commission Court at Madras therefore has jurisdiction to try the offence, (Somasundaram J.) In re Papayyaswamy.

AIR 1949 Mad 833=1949 MWN 452=1949-2 M L J 152=51 Cr L J 34.

——Ss. 179, 181 — 'Consequence' in S. 179, meaning of. AIR 1929 Sind 30 = 30 Cr L J 249, Overruled.

The word 'consequence' in S. 179, Criminal P. C. must be given its ordinary grammatical meaning, so that if any consequence ensues which is not a necessary ingredient of an offence, the Court, in the jurisdiction of which that consequence ensues, has jurisdiction The ordinary grammatical meaning of the word "consequence" construing S. 179, Criminal P. C., as a whole, is a consequence which is a necessary ingredient of an offence. AIR 1929 Sind 30 = 30 Cr L J 249, Overruled. (Davis C. J., Rupchand, Mehta and Havelivala A. J. Cs.) Mukhi Tirathdas v. Jethanand Matvalomal.

AIR 1937 Sind 68 = 9 R S 222= 31 S L R 123=168 I C 89=38 Cr L J 512 (FB).

——Held, S. 179 did not apply to case.

Offences contemplated in S. 179, Criminal P. C., are those which are not complete till a specified consequence has ensued. The consequence must be an essential ingredient of the offence and it must arise within the jurisdiction of the Court trying the offence. Where these consequences arose at D as soon as a newspaper was published according to the declaration made by the publisher and the consequence which arose at H was one which had already arisen at D. S. 179 does not apply to the case. (Niyogi, and Gruer, A. J. Cs.) Dewan Singh Maftoon v. Emperor.

AIR 1936 Nag 55=8 R N 219=19 N L J 84=161 I C 635=37 Cr L J 474 (2).

——Ss. 179, 181 and 182 —Whether mutually exclusive — Applicability of S. 179 —Act done and consequences ensued must together make the offence — Time and place of offence uncertain S. 182—Offence complete at A Loss at B—Trial at B - Court at B, if has jurisdiction. 27 Cr L J 992 ; A I R 1926 All 466 ; 31 Cr L J 865 ; AIR 1930 All 449 ; 31 Cr L J 856 ; 35 All 29 ; A I R 1932 All 367 ; 33 Cr L J 711 (2), Overruled.

Section 179, Criminal P. C., neither controls nor is controlled by S. 181. These sections have a cumulative effect and are not mutually exclusive in the sense that if one section applies, the other can never possibly apply.

The consequence must be a necessary ingredient of the offence in order that S. 179, Criminal P. C., may apply. If the offence is complete in itself by reason of the act having been done and the consequence is a mere result of it which was not essential for the completion of the offence, then S. 179, Criminal P. C., would not be applicable.

In many cases of criminal misappropriation or breach of trust, there may be considerable difficulty in ascertaining the exact place, where or the exact point of time when the offence was in fact committed. In cases of such uncertainty S. 182, Criminal P. C., would apply.

Where an offence under S. 403, Penal Code, was committed at A and was complete but the actual loss fell or was likely to fall at place B :

Held, that the Court at B had no jurisdiction to entertain the complaint. 27 Cr L J 992 : A I R 1926 All 466 ; 31 Cr L J 865 : A I R 1930 All 449 ; 13 Cr L J 856 : 35 All 29 : A I R 1932 All 367 : 33 Cr L J 711 (2), Overruled (Sulaiman C. J., Mukerji and King JJ.) Kashi Ram Mehta v. Emperor,

AIR 1934 All 499 = 1934 A L J 308 = 6 R A 902=3 A W R 506=56 All 1047=149 I C 420=35 Cr L J 982 (FB).

——Essential ingredients of offence for applicability of S. 179.

Section 179, Criminal P. C., does not come into operation in a charge of conspiracy to cheat as conspirators are not charged with the offence of conspiracy by reason of any consequence which has ensued in pursuance of the conspiracy. Before S. 179 can be invoked it is necessary to show that "the consequence which has ensued" is an essential ingredient of the offence. (Rupchand J. C. and Lobo A. J. C.) Gokaldas Amarsee v. Emperor,

AIR 1933 Sind 333=27 S L R 392=6 R S 180=148 I C 135 (2)=35 Cr L J 585 (FB).

The term "consequence" means a consequence which forms a part and parcel of the offence. It does not mean a consequence which is not such a direct result of the act of the offender as to form no part of the offence. (Beaumont C. J., Madgavkar and Baker JJ.) In re Jivandas Savchand,

A I R 1930 Bom 490=32 Bom L R 1195=1930 Cr C 1026=55 Bom 59=32 Cr L J 331 (FB).

——The provisions of S. 179 do not apply in so far as the words "and of any consequence which has ensued" are concerned where the offence alleged is complete.

Where there was a conspiracy for bringing into existence a false report with regard to a service return, the proper forum of trial of the service peon, the witnesses to the false report, and other parties is the place where the

CRIMINAL P. C. (V of 1898), S. 179 — 4. Nature of 'consequence'—(b) Consequence, etc.

service of evidence was obtained and offence completed and not the place where consequences of the false service return followed. (Wort J.) Abdul Karim v. Emperor,

A I R 1929 Pat 640=117 I C 309 = 10 P L T 161 = 1929 Cr C 369=30 Cr L J 765.

——The word "consequence" in S. 179 does not include all the possible results of an act, but is restricted in its scope to certain specified results; those are the results specified in the provision of the law making the act an offence. (Hallifax A. J. C.) Banerji v. Potnis,

AIR 1924 Nag 253=81 I C 538=20 N L R 72=25 Cr L J 922.

——Scope—"Consequence", meaning.

Consequence means a consequence which forms part and parcel of the offence and does not mean a consequence which is not such a direct result of the act of the offender as to form any part of that offence. 38 Mad 639, 29 M L J 178 and 7 P R 1910 Foll. (Motisagar J.) Nadar v. Emperor,

AIR 1923 Lah 487=73 I C 323=24 Cr L J 579.

——False verification — Verification signed at one place but presented in another place of signing gives jurisdiction.

A petition under S. 21 of the Income Tax Act, 1918 was verified at a place in the Tanjore District but presented in Ramnad District. On a complaint of an offence under S. 177, I. P. C. read with S. 40, Income-tax Act, being filed in Ramnad, held that the alleged offence was completed in the Tanjore District and that the Ramnad Magistrate had no jurisdiction to entertain the complaint. (Oldfield and Ramesam JJ.) In re Mohideen Pakiri Marakkayar,

A I R 1923 Mad 50 = 45 M 639 = 43 M L J 475=31 M L T 282 (H C)=16 L W 335=(1922) M W N 690= 68 I C 843=23 Cr L J 619.

——The 'consequence' contemplated by S. 179 of the Code must be an essential part of the offence charged. (Oldfield and Ramesam JJ.) In re Mohidin Pakiri,

A I R 1923 Mad 50=43 M L J 475=68 I C 843=45 Mad 839 = 16 M L W 335 = 31 M L T 282 = 1922 M W N 690=23 Cr L J 619.

——Jurisdiction — "Any consequence that has ensued" —Meaning.

The words "any consequence that has ensued" in S. 179 mean some consequence modifying or completing the act or acts constituting the offence, and do not include the loss resulting to an employer from criminal breach of trust by his servant. Thus, where goods were sent from Delhi to Calcutta to the accused for sale on commission and the accused mortgaged the goods and pocketed the money, Held that the offence was completed at Calcutta where the accused misappropriated the money and therefore the Calcutta Court only had jurisdiction over the case. The fact that money should have been sent to Delhi did not give that Court jurisdiction. (Arthur Reid C. J.) Gokal Chand v. Phul Chand,

7 P R 1910 Cr=5 Ind Cas 830=7 P W R 1910 Cr= 1910 P L R 172=11 Cr L J 253.

——Nature of consequence contemplated by section—The consequence referred to in S. 179 must be one of the facts to be proved to establish the offence. Where it does not form an integral part of the offence, but is a consequence arising from it, it is not within the section (Hartnoll, J.) Shwe Myat V v. M. C. P. Subramanian Chetty,

5 L B R 57=2 Ind Cas 546=10 Cr L J 86.

——Ss. 179 and 185 — Jurisdiction—Complaint was laid before a Magistrate at Aligarh, that the accused had dishonestly and fraudulently, two days after he had become an insolvent, realized at Calcutta the moneys due in respect of certain hundis which the complainant had purchased; held that the offence alleged should be inquired into at Calcutta and not at Aligarh. (Knox J.) Babulal v. Ghansham Das,

A W N 1908, 115=5 A L J 333=7 Cr L J 394.

4. Nature of 'Consequence'—

(c) Illustrative Cases.

——Telegram.

Where the accused at C gave the telegram for despatch from T to one J.

Held, that he caused the despatch of the telegram at T and the T Court had jurisdiction to try the offence under Ss. 468-109 and 420-511, Indian Penal Code. (Jackson J.) E. Raman Chettiar v. King-Emperor,

AIR 1927 Mad 77=51 M L J 634=99 I C 127=28 Cr L J 95.

——Letter.

Where the crucial letter by which for the first time the complainant was clearly led to realise that there had been an intention to cheat on the part of the accused was received by him at Buxar.

Held, that there was jurisdiction to try the accused at Buxar. (Bucknill J.) P. H. Metcalf v. G. Watson,

AIR 1924 Pat 708=76 I C 17=25 Cr L J 81.

5. Offences committed outside India.

——Offence under S. 420, Penal Code—Accused printing lottery tickets at place in British India and despatching them from that place—A purchasing them in Travancore —B in Travancore purchasing from A—Lottery not held —Deception of B and parting of money by B held took place at Travancore — C in Trichur (place in Travancore) ordering tickets by V.P.P.—Payment made at Post office in Trichur—Post office held acted as agent for accused— Deception held took place at Trichur — Assuming Post Office acted as agent of C in transmitting money to accused, consequence of deception took place in British India and S. 188 applied : See ibid, Ss. 177, 179, 188.

AIR 1949 Mad 3=50 Cr L J 70.

——Applicability—Criminal breach of trust.

The "consequence" referred to in S. 179 is confined to that which is an ingredient of the offence for which an accused person is being tried. Section 179, therefore, applies to those offences which by their very definition consist of an act and its consequence, for example, culpable homicide, but it does not apply to a criminal breach of trust : A I R 1933 Nag 33, Not approved. (Hemeon J.) Laxman v. Dayabhai,

AIR 1948 Nag 80=ILR (1947) Nag 378=1947 N L J 363=1947 A W R Sup 101=1947 O A Sup 101=49 Cr L J 121.

——Applicability.

Absence of certificate under S. 188 — Illegality is not curable under S. 537—Section 179 has no bearing on such case. (Thomas C. J.) Mohammad Zaman v. Emperor,

A I R 1945 Oudh 231 = 20 Luck 370=1945 O W N (C C) 115=1945 A W R (C C) 74=18 R O 89=220 I C 38=46 Cr L J 650.

——Ss. 179, 188 — Offence committed in Native State— Part of consequences ensuing in British India—Jurisdiction of Court in British India — Necessity of Political Agent's certificate.

Under the terms of S. 188, Criminal P. C , as it stands since the amendment of 1923, a Court in British India cannot try an offence by virtue of the terms of S. 179 of the Code, merely because part of the consequences has

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ensued within its jurisdiction if some part of the offence has been committed in a Native State, without the certificate of the Political Agent. (Curgenven and King JJ.) T. Fakurulla Khan v. Emperor,

AIR 1935 Mad 326=41 L W 352=8 R M 598=1935 M W N 325 (2)=68 M L J 415=159 I C 1048 = 37 Cr L J 195.

——Applicability.

Offence under S. 290, Penal Code — Act committed in French territory—Annoyance to persons in British India—British Indian Courts have no jurisdiction to try the offence under S. 290, Penal Code—Section 179, Criminal P. C, does not apply to such case—Even if S. 179 applies, the offence will not be inquired into in British India without a certificate or sanction under S. 188. (Pandrang Row J.) Sreerama Murthy v. Emperor,

AIR 1935 Mad 189=1934 M W N 1316=41 L W 82 =7 R M 416=68 M L J 211=154 I C 146 = 36 Cr L J 467.

——S. 179, Chap. XV — Offence committed by foreigner in British India—Whether can be tried in British India.

A person abroad may, by the employment as well of a conscious as of an unconscious agent, render himself amenable to the law of British Courts or British Indian Courts when he comes within the jurisdiction of such Courts.

Before foreigners residing outside British India can be tried for any offence by a Court in British India, such offence must have been committed by them in British India. Where an offence of conspiracy to cheat was committed outside British India, the offenders cannot be tried for that offence by any Court in British India. As an offence committed outside British India by a foreigner residing in a foreign country is not an offence punishable under the Penal Code, there is no scope for calling in aid the provisions of the Criminal P. C. All the sections in Chap. XV are to be read subject to the general rule that an act committed on land outside British territory by a foreigner not being a servant of the King is not an offence triable by the British Courts and Illus. (d) to S. 179 must be read subject to this general rule. The doctrine that the law of the country where a crime has been committed governs the nature of the offence and that the Courts of that country alone have jurisdiction to try the offender is a well-established principle of international law. (Rupchand J. C. and Lobo A. J. C.) Gokaldas Amarsee v. Emperor,

AIR 1933 Sind 333=27 S L R 392=6 R S 180=148 IC 135 (2)=35 Cr L J 585.

——Ss. 179, 188—S. 188, whether overrides S. 179.

Since the amendment of the Criminal P. C., S. 188 overrides S. 179 in any case in which S. 188 is applicable. (Rankin C. J. and C. C. Ghose J.) Superintendent and Remembrancer of Legal Affairs, Bengal v. Ludur Chandra Das

A I R 1932 Cal 465=59 C 1055=Ind Rul (1932) Cal 185=36 C W N 456=136 I C 137=33 Cr L J 267.

——Sections 179 to 184 are controlled by the provisions of S. 188 and the alternative jurisdiction conferred by those sections can be exercised on the production of the certificate of the Political Agent according to the special provisions of S. 188. 41 All 452, Rel. on; 21 M L J 441 and 5 S L R 266, Ref. 38 Mad 779, held no longer good law. (Patkar and Wild JJ.) Emperor v. Sana Mathur,

AIR 1930 Bom 155=32 Bom L R 98=54 Bom 171= 1930 Cr C 479=125 I C 417=31 Cr L J 833.

— Offence committed outside British India.

CRIMINAL P. C. (V of 1898), S. 179 —5. Offences committed outside India

The complainant was assaulted by the accused within the Baroda territory, and as a result of the assault one of his legs was completely broken in that territory. He was brought into a hospital within the British territory in consequence of this injury, and he was not able to follow his ordinary pursuits for a period of over a month. He filed a complaint against the accused for an offence under S. 328, Penal Code in a British Indian Court :

Held, that S. 179 did not apply, since the injury that was done, was complete within the Baroda territory. (Russell and Aston JJ.) Sirdar Meru v. Jetabhai Amirbhai,

8 Bom L R 513=4 Cr L J 54.

—S. 180.

——See also ibid, S. 531.

——Complaint under S. 498, I. P. C at place M — Woman found at S and given in custody of A to produce at M—Failure of A — Complaint against A under Ss. 201 and 368, I. P. C., at place M — Held court at M had jurisdiction to try it, under S. 180, Cr. P. C. as A had knowledge of her being enticed. (P. L. Bhargava J.) Anup Singh v. State through Mam Chand,

1951 All W R (H C) 39.

——Ss. 180, 179—Applicability — Conspiracy hatched at one place and kidnapping in pursuance of it committed at another—Place of trial.

Where the conspiracy is hatched at Howrah and the offence of kidnapping in pursuance of it is committed at Ballia in U. P. the Court at Ballia has jurisdiction to try the offence of conspiracy. S. 179 has no application to such a case. A. I. R. 1936 Mad. 317, Dissented from; 1934 A. L. J. R. 308, Rel. on. (Brij Mohan Lall J.) State v. Keshari Singh,

1951 R D (H C) 48.

——Conspiracy is a substantive offence in itself. It is not given in one of the illustrations to S. 180, as one of the offences which is an offence because of its relation to another offence, such as abetment which would give the Court jurisdiction either where the principal offence or the connected offence was committed, nor can it be brought within the meaning of the section itself. (Davis J. C. and Lobo J.) Emperor v. Pursumal Gerimal,

A I R 1938 Sind 108 = 10 R S 298 = I L R (1939) Kar 41=175 I C 620=39 Cr L J 630 (2).

——Ss. 180 to 182 — Continuing offence — Abduction — Jurisdiction — Offence, if triable in more local areas than one.

The offence of abduction is a continuing offence and when it continues to be committed in more local areas than one, it may be enquired into or tried by a Court having jurisdiction over any of such local areas. (Srivastava and Nanavutty JJ.) Emperor v. Parag,

A I R 1933 Oudh 45 = 9 O W N 1181 = Ind Rul (1933) Oudh 77=141 I C 741=34 Cr L J 220.

——Ss. 180, 182 — Abduction — Removal of girl from place to place — Continuing offence —Abetment—Proper Court for trial — Penal Code (Act XLV of 1860), Ss. 366, 366-A, 368, 372.

A girl lived with her parents at Moradabad. A and B who were residents of Hapur, within the jurisdiction of the Sessions Judge of Meerut, came to Moradabad and induced the girl to leave Moradabad with intent to seduce her to illicit intercourse with another person. They took her to Hapur where they were joined by C and D. A, B, C and D then took her to Hafizabad in the Punjab. Here they were joined by E. These five then proceeded to an adjacent village and sold the girl. A, B, C, D and E were committed to the Court of Session of Moradabad on charges in the alternative under Ss. 366 and 366-A, I. P. C.;

CRIMINAL P. C. (V of 1898), S. 180

Held, (i) that the offence of abduction being a continuing one, the Sessions Judge of Moradabad had jurisdiction to try C, D and E also under S. 182, Criminal P. C., though the part played by them was outside his jurisdiction;

(ii) that C, D and E were clearly guilty of abetment of an offence under S. 366-A, and under S. 180 (a), Criminal P. C.; they could be tried at Moradabad where the principal offence was committed;

(iii) that all the five accused persons who were committed to the Court of Session could be tried for an offence under S. 372, I. P. C. This offence, however, was committed at Rampur and was beyond the jurisdiction of either the Court of Session or that of a Magistrate of the First Class of the Moradabad District.

The offence of kidnapping from lawful guardianship is not a continuing offence. As soon as the minor is actually removed out of the custody of his or her guardian, the offence is completed. But, unlike kidnapping, abduction is continuing offence. A girl is being abducted not only when she is first taken from any place but also when she is removed from one place to another.

The venue of the trial of a case under S. 368, I. P. C. is evidently the Court within whose jurisdiction the kidnapped or abducted person has been wrongfully concealed or confined. (Mears C. J. and Sen J.) Emperor v. Nanhua Dhimar,

A I R 1931 All 55=1930 A L J 1485=Ind Rul (1931) All 358=53 All 140=131 I C 246=32 Cr L J 690.

——Non-British subject in Native State cannot be tried in Br. Courts.

British Courts have no jurisdiction over a non British subject retaining stolen property in a Native State. 9 All 523; 16 P. R. 1880 (Cr.); 22 P. R. 1888. Cr. foll. (Wilberforce J.) Muhammad Hussain v. Emperor,

2 Lah L J 348=68 I C 160=23 Cr L J 560.

——Conspiracy to murder entered into one district and attempt made in another district—Jurisdiction.

If the conspiracy to murder a person is formed in one district and an attempt to murder him in pursuance of the conspiracy is made in another district, the courts in both districts can enquire into and try the case as under S. 180, Cr. P. Code. (Broadway J.) Gurdit Singh v. Emperor,

A I R 1917 Lah 237 = 1 P W R (Cr) 1917= 24 P R Cr 1917=74 P L R 1917=39 I C 482=18 Cr L J 514.

——Ss. 180, 188—Dacoity taking place in British India—Property found in possession of native Indian Subject in native State—Trial of that person in British India.

Though under S. 180, Criminal P. C., the offence under S. 412, Penal Code could be tried at the place where the property was retained or where the theft or dacoity took place, yet under S. 188 of the Code, a certificate of the Political Agent is necessary if the charge is against a native Indian subject in a native state and is to be tried in British India. A commitment if there is no such certificate should be quashed. (Abdur Rahim J.) Sessions Judge of Tanjore v. Sundara Singh,

6 Ind Cas 308=1910 M W N 143= 8 M L T 54 = 11 Cr L J 306.

—S. 181.

See also ibid, S. 531.

SYNOPSIS

1. Belonging to a gang of dacoits.
2. Criminal misappropriation.
3. Criminal breach of trust.
4. Property which is the subject of the offence.
5. "Received or retained."
6. Theft.
7. Kidnapping and abduction.
8. Effect of trial in wrong Court.

CRIMINAL P. C. (V of 1898), S. 181

1. Belonging to a gang of dacoits.

——S. 181 (1)—Belonging to a gang of dacoits—Jurisdiction of Court.

A Magistrate has jurisdiction to commit for trial a resident of a Native State accused of the offence of belonging to a gang of dacoits arrested in the State, though the accused's participation in an offence committed within the district over which the Magistrate has jurisdiction, is not alleged. The word 'is' applies equally to the accused brought there by force as to the accused coming there of his own accord. (24 I A 137: 17 P R 1903: 6 B. 622, Ref.) (Arthur Reid C. J. and Rattigan J.) Emperor v Gobinda,

1 P R Cr 1911=4 P W R Cr 1911=84 P L R 1911= 9 I C 677=12 Cr L J 113.

2. Criminal misappropriation.

——S. 181 (2) — Charge of criminal misappropriation — Venue of trial—See ibid, 179

A I R 1952 Mad 158=1952 Cr L J 308.

——S. 181 (2)—Place of prosecution— Agent can be tried at place to which he is bound to make remittance — See Penal Code (1860), S. 409.

A I R 1932 All 367=33 Cr L J 711 (2).

[Overruled in A I R 1934 All 499=35 Cr L J 982]

——S. 181 (2)— Only liability to account at certain place but no duty to deliver property at that place — Court at that place, if has jurisdiction to try offence under S. 409, Penal Code (Act XLV of 1860).

Where it is alleged that the accused has failed to account for the property, then the second part of S. 405, Penal Code, will apply and jurisdiction exists at the place where the property should have been delivered by the accused. Where, however, there is only a liability to account at a certain place and no duty to deliver any property at that place, the Criminal Court at the place where the accounting is to be done has no jurisdiction to try the offence. (Mulla J.) Fateh Singh v. Emperor,

A I R 1940 All 92 = 1939 A L J 1060 =1939 A W R 784=12 R A 436 = I L R (1940) All 43=186 I C 481= 41 Cr L J 325.

——Agreement to render accounts at particular place — If includes further agreement to carry property or money to that place.

An agreement to render accounts at a particular place cannot be deemed to include, in every case, a further agreement to carry any property or money to that place. Where the question of jurisdiction turns upon the allegations made by a party, it is not fair to read into them something which they do not express and which may or may not be implied. (Mulla J.) Fateh Singh v. Emperor,

A I R 1940 All 92=1939 A L J 1060 = 1939 A W R 784=12 R A 436=I L R (1940) All 43=186 I C 481 = 41 Cr L J 325.

——S. 181 (2) — Complaint under Ss. 403, 417, Penal Code (Act XLV of 1860).

A resident of Ghaziabad in the District of Meerut sent nine entries addressed to the Illustrated Weekly of India, Commonsense Cross Word, Bombay, with a postal order for Rs. 6 from the the Post Office of Muzaffarnagar. The case of the complainant (i. e., the competitor) was that the free-entry coupon No. 2 sent by the complainant tallied exactly with correct solution published by the accused but the prize of Rs. 25,000 payable to him was never paid. It

CRIMINAL P. C. (V of 1898), S. 181 — 2. Criminal misappropriation

was further alleged that the complainant sent in scrutiny claim for the re-examination of the solutions sent by him and also Rs. 5 as demanded by the accused. It was stated in the complaint that the accused did not send any reply to the inquiries made by the complainant. On these facts, it was alleged that the accused had criminally misappropriated the sum of Rs. 6 sent by postal order as entry fee and the sum of Rs 5 sent by M. O. as scrutiny fee and thereby committed an offence under S. 403, Penal Code. The complaint was filed in the Court of a Magistrate of the Second Class at Muzaffarnagar:

Held, that even if it was assumed that the postal orders were received by the accused, the postal orders continued to be the property of the Illustrated Weekly of India. The delivery of the same to the accused was as an agent of the Illustrated Weekly of India. That being so, it could not be suggested that the accused received the letter containing the postal orders at Muzaffarnagar. The Post Office was the agent of the addressee and not of the accused. It might be that the accused converted the postal orders to his own use, but the conversion and misappropriation was effected at Bombay and not at Muzaffarnagar. There was yet another reason why the Magistrate at Muzaffarnagar had no territorial jurisdiction. The complainant sent the postal orders to the Illustrated Weekly to be allowed to enter the competition. It followed that the intention of the complainant was that the money should be appropriated by the addressee. If the accused dishonestly and fraudulently misappropriated the money which was the property of the Illustrated Weekly of India, he deprived the addressee of the money and not the complainant. Whatever view might be taken, there could not be the least doubt that according to the allegations of the complainant, the misappropriation took place at Bombay and not at Muzaffarnagar. Hence the Magistrate at Muzaffarnagar had no territorial jurisdiction to try the case. (Mohammad Ismail J.) G. A. St. George v. Uma Dutt Sharma,

A I R 1939 All 602 = 1939 A L J 574=1939 A W R 570=12 R A 217=I L R (1939) All 851=184 I C 313=40 Cr L J 917.

——Money received at L on account of pro-note at L — Accused belonging to A — Retention of money at A — Complaint under S. 379 read with S. 403, Penal Code (Act XLV of 1860) — Jurisdiction of Court at A to entertain.

K who resided in A had a pro-note executed in his favour by I, who resided at B in the District of L. When K demanded money, I pleaded discharge and produced the original pro-note with an endorsement on its back in the handwriting of H who was also resident of A. K demanded this money from H but he put him off on various excuses and eventually K lodged a complaint under S. 379, read with S. 403, I. P. C., against H in the Court at A:

Held, that though the money was received on account of the pro-note at L, it was retained at A to which place the accused belonged and this retention of money which the accused knew did not belong to him conferred jurisdiction in the Courts at A. (Din Mohammad J.) Husain Bakhsh v. Khuda Bakhsh,

A I R 1937 Lah 85 = 10 R L 218=I L R (1937) Lah 299=39 P L R 868=171 I C 629=38 Cr L J 1100.

——Ss. 181 (2), 179 — Penal Code (Act XLV of 1860), S. 409—Criminal misappropriation—Jurisdiction to try—Money received honestly at X and misappropriated at Y —Trial at Y — Validity of proceedings.

Section 181 (2), Criminal P. C., overrides and is not qualified by S. 179. A case on a charge of criminal misappropriation or breach of trust can only be tried by a Court within the limits of whose jurisdiction any part of the property concerned was received or retained by the accused person or the offence was committed.

The existence of a contractual or other obligation to deliver property at a certain place or the fact that loss is caused at that place will not empower the Court having jurisdiction there to try a person who has misappropriated it elsewhere. This does not, however, mean that in spite of the clear words in S. 181 (2), a charge of criminal misappropriation or breach of trust can only be tried by a Court having jurisdiction at the place where the property was received. If the accused received the money honestly at X and criminally misappropriated it at Y, the offence will be triable at Y as well as at X. (Coldstream J.) Aya Ram v. Gobind Lal,

A I R 1933 Lah 559 = 6 R L 41=144 I C 991=34 Cr L J 902.

——S. 181 (2) — Misappropriation at one place — Non-accounting at another—Jurisdiction of latter Court.

The complainant had his head office at Calcutta and the accused were in charge of certain branches of the complainant's firm in Bihar. The complaint against the accused was that they drew hundis on the Calcutta firm, cashed them locally and recovered the moneys and did not credit them in the accounts, that they sold stock and received moneys from other persons and did not enter the amounts in the books. All thess acts took place in Bihar. The accused were called to Calcutta, they were unable to explain the accounts and so were charged at Calcutta on the ground that the non-accounting took place at Calcutta:

Held, that the Calcutta Court had no jurisdiction to try the offence inasmuch as non-accounting at Calcutta was not the only evidence of misappropriation in the case but on the other hand the allegations in the complaint showed that all the acts of misappropriation took place in Bihar. (Lort-Williams and Malik JJ.) Niwasilal Modi v. Routhmull,

A I R 1931 Cal 532=Ind Rule 1931 Cal 929=134 I C 929=32 Cr L J 1249.

——Venue of trial.

In a case of criminal misappropriation, if there is evidence apart from the fact of non-accounting to show where the misappropriation was committed, the venue must be laid either in that place or in the place where the property was received or retained. If there is no evidence to show where the misappropriation was committed other than the fact of non-accounting, then the venue may be laid in the place where the accused failed to account, because that is where the offence was committed within the meaning of S. 181 (2).

Where there was evidence that the accused embezzled money at S and he did not come to C till he was apprehended by the Police and brought for his trial at C:

Held, that the Court at C had no jurisdiction to try the accused at C and consequently his conviction by that Court was illegal. (Lort-Williams and S. K. Ghose JJ.) Poul De Flondor v. Emperor,

A I R 1931 Cal 228=35 C W N 809=Ind Rul (1931) Cal 817=59 Cal 92=134 I C 433=32 Cr L J 1167.

——S. 181 (2) — Failure to account at particular place, whether gives jurisdiction—Facts uncertain—Prosecution at place where accused should have accounted — Interference in revision.

The mere failure to account at a place where a person entrusted ought to have accounted is not the same thing as dishonestly using or dishonestly disposing of the money at that place and the offence cannot be said to be com-

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mitted at that place, so as to give jurisdiction to the Court at that place to try it.

Where, however, there was no certainty as to the facts as to whether the money was dishonestly disposed of or misappropriated at the place where the person was to account for the same and the prosecution was carried on at that place, the High Court refrained from interfering with the prosecution. (Rankin C. J. and Mallik J.) G. N. Pascal v. Raj Kishore Mathur

AIR 1931 Cal 521 = 35 C W N 320 = Ind Rul 1931 Cal 751 = 133 I C 703 = 32 Cr L J 1042.

——The offence of criminal misappropriation is triable only by the Court within the limits of whose jurisdiction the misappropriation took place.

A partner, bound under the articles of partnership to manage the business at Rangoon and forward weekly accounts to the head office at Bombay, misappropriated the firm's moneys at Rangoon and sent false accounts to Bombay. Held, (i) The offence was committed at Rangoon and the Bombay Courts had no jurisdiction. (ii) The accounts submitted at Bombay were only evidence of the commission of the offence and could not confer jurisdiction. (iii) The consequent loss to the principal was not a part of the offence. Case law reviewed. (Beaumont C. J. Madgavkar and Baker JJ.) Jivandas Savchand, In re

AIR 1930 Bom 490 = 32 Bom L R 1195 = 1930 Cr C 1026=55 Bom 59=129 I C 385= 32 Cr L J 331 (FB).

——Place of accounting.

Where the accused is under a liability to render accounts at a particular place and fails to do so by reason of having committed an offence of criminal breach of trust which is alleged against him, the Court, within the local limits of whose jurisdiction that place is situated, may enquire into and try the offence under the provisions of S. 181 (2). AIR 1925 Cal 613, Foll. (Zafar Ali J.) Ram Sahai v. Krishnalal

AIR 1926 Lah 119 = 96 I C 212 = 7 L L J 586 = 27 Cr L J 900.

——Place of accounting.

Where the accused is under a liability to render accounts at a particular place and fails to do so by reason of having committed an offence of criminal breach of trust which is alleged against him, the Court, within the local limits of whose jurisdiction that place is situated, may enquire into and try the offence under the provisions of S. 181 sub-s. (2). (Suhrawardy and Mukerji JJ.) Gunananda Dhone v. Lala Santi Prakash Nandy

AIR 1925 Cal 613 = 86 I C 213 = 41 C L J 80 = 29 C W N 432 = 26 Cr L J 725.

——Where the complaint was that accused No. 1 delivered a certain amount to accused No. 2 in Kangra District for payment at Hoshiarpur and that the money was dishonestly misappropriated by both the accused in Kangra District, the offence is triable only in Kangra District. (Campbell J.) Dinanath v. Tulshi Ram

AIR 1925 Lah 171 = 83 I C 696 = 6 Lah L J 471 = 26 Cr L J 136.

——Where money was received by P from the complainant in Calcutta, that is, the misappropriation took place there:

Held, that the case should be tried in Calcutta (C. C. Ghose and Cuming JJ.) A. K. Maitra v. Kamini Mohan Bose

AIR 1925 Cal 107 = 77 I C 425 = 25 Cr L J 377.

——Under S. 403, Penal Code, the offence is complete, the moment the accused receives or retains the money with a dishonest motive of appropriating it or converting it into his own use. Where the accused receives money in respect of which the offence is committed at one place to

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be handed over at another, the offence is committed at the former place. The failure to hand over the money is not a necessary ingredient to constitute an offence of criminal misappropriation and is therefore not a consequence which has ensued by reason of anything done by the accused. (Jwala Prasad J.) Gawkaran Lal v. Sarjoo Saw

AIR 1921 Pat 85 = 1 Pat L T 200 = 56 I C 775 = 1921 P H C C 31=21 Cr L J 519

'3. Criminal breach of trust

——S. 181 (2) —Applicability — Cases of criminal breach of trust—See ibid, S. 179

AIR 1951 Assam 131 = 52 Cr L J 1388 (FB).

——Ss. 181, 236, 237, 439, 526 — Offence under S. 406, Penal Code—Jurisdiction of Magistrate.

The High Court will not interfere in the exercise of its revisional jurisdiction and quash a complaint when on the face of it, an offence is disclosed, on the sole ground that the Magistrate who entertained the complaint had no territorial jurisdiction to try the offence.

Accused 2 visited the complainant who was the Manager of the Fakiragram Rice and Oil Mills at Fakiragram and informed the complainant that there was a great demand for mustard oil at Karimganj and that if he cared to sell the oil at Karimganj he would sell it for him as his agent. The complainant apparently agreed and it was arranged between the complainant and accused 2 that the complainant would send the mustard oil for sale and that accused 2 would remit the sale-proceeds by draft, hundi, or postal insurance and also send account of the sale-proceeds to the Fakiragram Rice and Oil Mills at Fakiragram. The complainant sent 441 tins of mustard oil to Karimganj and one Boironglal personally went to Karimganj and took delivery of the tins and made over the consignment to accused 2 at Karimganj. Shortly afterwards accused 2 wrote letters to the complainant telling him that there was no demand for mustard oil at Karimganj and that the oil could not be sold. As nothing further was heard of the consignment, the complainant himself proceeded to Karimganj to make enquiries. To the complainant's surprise accused 1 and 2 informed him that the mustard oil had been sold, and the sale proceeds had been paid to accused 3. The complainant made every effort to contact accused 3 but in vain.

Held (Per Thadani C. J. and Deka J., Ram Labhaya J. contra) that the complaint disclosed an offence. Held further: It could not be held that the complaint disclosed an offence only under S. 406, Penal Code. Manifestly the facts alleged in the complaint were capable of a twofold interpretation. It may well be that all the accused were acting in concert in getting the oil to Karimganj under false pretences, never intending to remit the sale proceeds to the complainant. If, in pursuance of such conspiracy, accused 2 made certain promises at Fakiragram which he had no intention of keeping, the possibility of the accused having committed an offence of cheating could not be ruled out and if the facts at the trial disclosed an offence of cheating, the Dhubri Magistrate would have jurisdiction to try the offence. Further if the facts proved at the trial made it difficult for the Magistrate to say what offence or offences the facts proved constituted, he might have resort to the provisions of Ss. 236 and 237 for resolving the difficulty. Hence this was not a case in which the High Court's power of transfer under S. 526 ought to be exercised. Case law referred. (Thadani C. J., Ram Labhaya & Deka JJ.) Bangshilal v. Rowtmal

AIR 1951 Assam 131 = ILR (1952) 4 Assam 49=52 Cr L J 1388 (FB).

CRIMINAL P. C. (V of 1898), S. 181 — 3. Criminal breach of trust

——S. 181 (2) — Criminal breach of trust committed at Surat—Prosecution at Akola—Jurisdiction.

The accused who instead of passing a cheque after endorsement to another person as he was bound to do, cashed the cheque at Surat and thereby committed criminal breach of trust, was prosecuted at Akola : Held that the Court at Surat and not at Akola had jurisdiction to try the case as the money was not received or retained and the offence was not committed at Akola. (Hemeon J.) Laxman v. Dayabhai

AIR 1948 Nag 80=ILR (1947) Nag 378=1947 N L J 363 = 1947 A W R Sup 101 = 1947 O A Sup 101 =49 Cr L J 121.

——S. 181 (2) — Criminal breach of trust—Place of commission of offence

In cases of criminal breach of trust, where there is no evidence to prove where the offence was committed i. e. where the property was misappropriated or dishonestly used, the place where the accused was bound to account for can be presumed to be the place where the offence was committed. (Sharma and Bapna JJ.) Rughnath v. Durga Devi

1946 J L R 294.

——Ss. 182 (2), 179—Person at B purchasing goods from firm at C and depositing price money with Bank at B with instructions to remit money to firm at C — Bank dishonestly retaining money— Court at C, if can try case —Penal Code (Act XLV of 1860), S. 409.

A contractor at Barisal placed an order for certain goods with the complainant's firm at Calcutta. The goods were to be sent to Barisal and it was arranged that the purchase-price would be remitted to the complainant's firm by a Bank at Barisal. It was alleged that the purchaser deposited this sum with the Bank at Barisal and instructed that Bank to remit the money to the complainant's firm at Calcutta. The Secretary and Managing Director of the Bank dishonestly retained the money in contravention of this direction. Proceedings under S. 409, Penal Code, were started at Calcutta :

Held, that both the entrustment and the breach took place at Barisal and the offence was completed there. The Magistrate at Calcutta had, therefore, no jurisdiction to try the case. (Khundkar and Edgley JJ.) S. Huda v. Ali Hussain M. Iqbal

AIR 1940 Cal 367 = 13 R C 128 = 189 I C 876 = 41 Cr L J 812.

——S. 181 (2) — T partner in certain firm at Akyab — He agreeing to do business on firm's behalf at Cochin and to send money and account to Akyab—Failure to send money and account, and closing of business — Complaint by firm lodged at Akyab for breach of trust—Court at Akyab, held had no jurisdiction.

The failure of a person to remit the money or to bring it to the place to which he had to bring it does not necessarily constitute the offence of criminal breach of trust although a person may have to account for money; it is not the failure to account, but the misuse of the money for dishonest purposes, which constitutes the offence.

T was a partner in certain firm at Akyab. It was agreed between him and the firm that he should go to Cochin, there receive consignments of rice sent by the firm both from Akyab and Rangoon and sell it there. He was required to submit accounts and pay the net cash balance resulting from the business to the firm at Akyab but did not do so. Further, while he was in Cochin, he realized a certain sum on behalf of the firm in a Court of law. This sum also he failed to remit or account for. He then closed the business in Cochin but instead of returning to Akyab to submit his accounts and pay the money in, he proceeded at once to his native place in Cutch. The firm filed a complaint for breach of trust before a Magistrate at Akyab :

Held, that the Court at Akyab had no, jurisdiction. If T had left money in Cochin, the offence was committed at Cochin. If he took the money somewhere else he must have misappropriated the money in Cochin because it was there that he failed to do with the money that which it was required of him to do, namely send it to the firm at Akyab. So in any case, the offence was committed at Cochin and not at Akyab. (Mackney J.) Vasanji Khimjee v. Kanji Tokersey

AIR 1938 Rang 94 = 1938 Rang L R 1=10 R Rang 468=175 I C 175 = 39 Cr L J 529.

——Criminal breach of trust — Accused bound to render account at certain place—Failure—Court at that place is fully competent to try the case. (Ziaul Hasan J.) Brij Kishore v. Chandrika Prasad

AIR 1936 Oudh 329=8 R O 272=1936 O W N 212= 12 Luck 77=160 I C 567=37 Cr L J 322.

——Breach of trust —Accused agent of firm in Cawnpore working in Calcutta — Money realized in Calcutta not remitted — Misappropriation or conversion not alleged — Cawnpore Court has jurisdiction to try the case. (Sulaiman C. J. and Bennet J.) Mohru Lal v. Emperor

AIR 1936 All 193 = 1936 A L J 3 = 8 R A 595= 1936 A W R 23 = 58 All 644=160 I C 356=37 Cr L J 284.

——Ss. 181 (2), 222 (2) — Penal Code (Act XLV of 1860), S. 406—Criminal breach of trust—Charge for gross sum—Jurisdiction of Court where part of the property was received.

The combined effect of Ss. 222 (2) and 181 (2), Criminal P. C., is that a person accused of criminal misappropriation can be tried by a Court within the local limits of whose jurisdiction any part of the property which is a subject of the offence was received by him.

Where the accused was charged with criminal breach of trust in respect of a gross sum consisting of five items, three of which were received by him in villages situate in Tahsils other than Baheri and the fourth item was part of a larger sum received by him in a number of villages situate in different Tahsils including some in Baheri :

Held, that the Sub-Divisional Magistrate of Baheri had jurisdiction to try the case. (Niamatullah J.) Sundar Lal v. Emperor

AIR 1932 All 26 = 1932 A L J 160 = Ind Rul 1932 All 52=135 I C 2[illegible]8=33 Cr L J 127.

——Entrustment to carrier—Place of delivery.

A carrier, who was entrusted with goods to be delivered at a particular place, had to journey through British as well as foreign territory. At the place of delivery he could not deliver the goods intact, and was accused of breach of trust. There was no evidence to show when and where the offence was committed, the only evidence of the breach of trust being the failure to deliver intact.

Held : that, failure to deliver the goods intact is sufficient evidence to prove breach of trust, and the place of delivery must be presumed to be the place where the offence took place unless the accused proves that the offence was not committed at that place: 38 Mad 639 and 5 Mad 23, Ref. and AIR 1923 Lah 487, Diss. (Wallace J.) Public Prosecutor v. Podimonu Beary

AIR 1928 Mad 1136 = 55 M L J 499=114 I C 238= 52 Mad 61 = 1928 M W N 791 = 12 A I Cr R 138 = 1 M Cr C 167 = 28 M L W 843 = 30 Cr L J 245.

——Where the complainant appointed the accused his agent for sale of certain commodities at N and that in

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pursuance of that arrangement he sent goods to the accused, who, however, in direct contravention of the directions given to him as to the manner in which the goods had to be sold, sold them and misappropriated the proceeds.

Held, that a criminal case under S. 409, Penal Code, cannot be instituted in L. A I R 1924 Lah. 663, Foll. (Jai Lal J.) Durga Prasad v. Banwari Lal

108 I C 901 = 10 A I Cr R 92=29 Cr L J 453 (Lah).

——S. 181 (2) does not in any way modify the provision of S. 179. (Dalal J.) Mahammad Rashid Khan v. Emperor,

A I R 1926 All 456=7 L R A Cr 114 = 96 I C 656= 27 Cr L J 992.

——S. 181 (2).

Section 181 (2) and not S. 179 applies to a case of criminal breach of trust. (Suhrawardy and Mukerji JJ.) Gunananda Dhone v. Lala Santi Prakash Nandy,

A I R 1925 Cal 613=86 I C 213 = 41 C L J 80 = 29 C W N 432=26 Cr L J 725.

——Section 179—Place of conversion.

For the application of S. 179, it is essential that the offence should depend on an act done and on a consequence which has ensued. Loss to one person though a normal result of an act of misappropriation by another, is not an essential ingredient of the offence of criminal misappropriation. The offence is complete if the conversion is done with the intention of causing wrongful gain to the offender irrespective of any loss which may ensue to any other person. The offence does not depend on the consequence which has ensued but on the act which has been done and therefore the offence is triable where the conversion takes place and the accused intends wrongful gain to himself and falls under S. 181 (1) : 44 C. 912, Foll. (May Oung J.) Ahmad Ebrahim v. Hajee A. A. Ganny,

A I R 1923 Rang 209 = 74 I C 74 = 1 Rang 56=2 Bur L J 40=24 Cr L J 746.

——S. 181 (2)—Penal Code (Act XLV of 1860), S. 406—Criminal breach of trust in respect of monies received at Singapore for which accused to account at Calcutta—Calcutta Court has jurisdiction.

Where in a complaint it was alleged that the accused while in service of the complainant's firm at Singapore committed criminal breach of trust in respect of monies received there but for which he was to account at Calcutta :

Held, that on the allegations made, Courts in Calcutta have jurisdiction. (Teunon and Ghose JJ.) Abdul Latiff v. Abu Md.,

A I R 1922 Cal 46 (1)=26 C W N 175=71 I C 241= 24 Cr L J 113.

——Ss. 181 (2) and 531 — Criminal breach of trust by servant—Trial outside jurisdiction.

Where the accused a Tahsildar realised a large sum of money at M, and long bound to render accounts at B, presented there a false account with false entries showing a less sum than he had realised :

Held, it was doubtful whether the Court at B, had jurisdiction to try the offence of criminal breach of trust against the accused. Section 531 of the Criminal P. C. requires the Court to see before setting aside a conviction on the ground that the trying Magistrate had no jurisdiction to try the case, whether there has in fact been a failure of justice. (Chitty and Beachcroft JJ.) Bemal Chandra Banerji v. Tej Chandra Banerjee,

A I R 1918 Cal 305=47 I C 92=19 Cr L J 896.

——S. 181 (2)—Criminal breach of trust—Jurisdiction.

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The complainant stated that the accused, his servant at Rurki, had made false entries in respect of various items and had committed the offence of criminal breach of trust, punishable under S. 408, Penal Code :

Held, that the case was triable only at Rurki : 7 P. R. (Cr.) 1910, Foll. (Rattigan J.) Emperor v. Raghbir Singh,

A I R 1916 Lah 453 = 22 P R Cr 1915 = 42 P W R (Cr) 1915=31 I C 375=16 Cr L J 775.

——Ss. 181 (2) and 188 — Criminal breach of trust committed in Native State — Part of property retained in British India—Jurisdiction.

Section 181 (2), Criminal P. C. applies only when the offences referred to therein are committed in British India. It has no application to an offence committed in a Native State. Where a criminal breach of trust was committed in a Native State, where the property was retained by the accused in Sind :

Held, that the Sind Court could not take cognizance of the offence except on a certificate of the Political Agent under S. 188, Criminal P. C. (Pratt J. C. and Hayward A. J. C.) Imperator v. Tribhun.

5 S L R 266=15 I C 802=13 Cr L J 530.

——S. 181 (2)—Criminal breach of trust—Forum of trial —See Criminal P. C., S. 179,

9 Cr L J 92 (Mad).

4. Property which is the subject of the offence.

——S. 181 (2)—Property subject of offence.

The accused entrusted with a railway receipt for goods in one district with instructions to take delivery at the destination, sold it and misappropriated the sale proceeds:

Held, that the offence was triable within the jurisdiction of the Court where the goods were sold and proceeds misappropriated. (Fox C. J.) P. L. T. A. Kasi Chetty v. V. V. Kasi Chetty,

A I R 1917 Low Bur 10=10 Bur L T 50=40 I C 293 =18 Cr L J 645.

5. "Received or retained."

——Place of actual receipt or retention is the test — Intention not material.

It is not essential, under S. 181, sub-s. (2), that at the time the property is said to be received or retained by the accused person he must have a dishonest intention to misappropriate it or to commit criminal breach of trust with reference to it. It is enough for the purposes of the section if the property which is the subject of the offence was received or retained by the accused at a particular place to give jurisdiction to the Magistrate of that place to try the case, even if the property was received quite properly and innocently, at that place, and was subsequently dealt with at another place dishonestly. 38 Mad 779 and A I R 1922 Bom 49, Dist.

The accused hired a cycle at Poona for six hours, but instead of returning the same in accordance with his written contract, he took it out to Yeola and deposited it with one D as a security for an advance of Rs. 6.

Held, that the Poona Magistrate would have jurisdiction to try the offence. (Shah and Percival, JJ.) Emperor v. Laxman,

A I R 1927 Bom 38 = 99 I C 76 = 51 Bom 101 = 28 Bom L R 1292=7 A I Cr R 216=28 Cr L J 44.

——Place where property is retained by accused.

The complainant who carried on business at Lyallpur had employed the accused M as agent of his firm to sell goods at Karachi. The contract of agency was entered into at Lyallpur, and it appeared that the agent was to remit the sale proceeds and to send his accounts to the complainant at Lyallpur. The principal preferred a complaint against the agent charging him with the commis-

CRIMINAL P. C. (V of 1898), S. 181 — 5. "Received or retained"

sion of an offence under S. 408. Held that property was received or retained by the accused at Karachi and that the offence if any was committed at that place and that the Lyallpur Court had no jurisdiction to entertain the complaint. (Shadi Lal, C. J.) Mahtab Din v. The Crown,

A I R 1924 Lah 663=77 I C 190=25 Cr L J 410.

6. Theft.

——S. 181 (3)—Jurisdiction to try person found to be in possession of stolen property — Place of commission of offence and of possession of stolen things.

A person found to be in possession of stolen property can be tried by a Court within the local limits of whose jurisdiction the offence of theft was committed or within whose jurisdiction it was possessed by any person who received or retained the same knowing or having reason to believe it to be stolen. (Niamatullah, J.) Emperor v. Zahir Nat,

A I R 1934 All 455 (2) = 7 R A 4=150 I C 558=35 Cr L J 1092.

——S. 181 (3) as amended means that the offence of being in possession of stolen property may be inquired into either in the district where the property was stolen or where it was found to be dishonestly possessed. The words "such offence" in that section mean the offence of theft though grammatically they should mean any offence of possession (Ashworth, J.) Emperor v. Bhima,

A I R 1926 All 167=24 A L J 148=6 L R A Cr 208 =91 I C 53=27 Cr L J 21.

——Jurisdiction—Test.

If a conspiracy is entered into in District A and acts are committed in pursuance of that conspiracy in District B, the Magistrate of District A can try the conspiracy but cannot try the accused in the same trial for acts committed outside his District. And the mere fact that the offences could have been tried jointly under S. 239, Cr. P. Code, if committed within his jurisdiction, will not give him jurisdiction to try them. (26 C W N 680, Dist.) (Newbould and Chakravarty, JJ.) Biseswar v. Emperor,

A I R 1924 Cal 1034 = 83 I C 911=28 C W N 975= 26 Cr L J 207.

——Jurisdiction — Robbery committed outside British India — Stolen property brought in British India — See Penal Code (45 of 1860), S. 392.

3 Cr L J 247 (All).

7. Kidnapping and abduction.

——Sale of girl outside jurisdiction of Court—Court cannot try offence under S. 372—But if accused was aware of the fact that the girl has been kidnapped or abducted and has been enticed away from her home and he confines the girl with a view to sell her he can be tried under S. 368 in the Court within whose jurisdiction the original abduction took place—See Penal Code (1860), S. 372.

A I R 1951 Ajmer 68=52 Cr L J 891.

——S. 181 (4) — Words 'kidnapping' and 'abduction,' scope of.

The words 'kidnapping' and 'abduction' do not include the offence of wrongful confinement or keeping in confinement a kidnapped person : AIR 1924 All 454, Rel. on. (Manohar Lall and Beevor JJ.) Adhik Gope v. Emperor,

AIR 1947 Pat 17=25 Pat 241=13 B R 186=228 I C 315=48 Cr L J 189.

——Ss. 181 (4) and 182 — Kidnapping and abduction if a continuing offence—Wrongful confinement distinguished—Jurisdiction to try—Joinder of charges.

It is a mistake to think that abduction is always a continuing offence. Insertion of the provision in sub-clause (4) to S. 181 makes it clear that the legislature

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has put kidnapping and abduction on the same footing. Words kidnapping and abduction do not include the offence of wrongful confinement or keeping in confinement a kidnapped person. The charge of wrongfully concealing a person known to have been abducted may be enquired into or tried by the Court within whose jurisdiction the wrongful concealing or within the local limits of whose jurisdiction the kidnapping took place. So far as the person who abducts a woman and goes on removing her from one place to another is concerned, it may be stated with some justification that the offence is a continuing offence and he may be properly charged in any of the places where the woman is kept detained against her will. But where some persons join the original abductor later on, they cannot be joined in the same trial unless it can be alleged that the offences committed by all the persons were in the course of the same transaction. (Manohar Lall and Beevor JJ.) Adhikgope v. Emperor,

AIR 1947 Pat 17=25 Pat 241=13 B R 186=228 I C 315=27 Pat L T 521=48 Cr L J 189.

——Ss. 181 and 177 — Complainant's wife enticed away from a place in district N and sold to accused in district P —Accused having no knowledge that complainant's wife was kidnapped or abducted — Magistrate at N framing charges under Ss. 373 and 368, Penal Code — Held, charge could only be framed under S. 373 and Magistrate at N had no jurisdiction to try that charge.

A complaint was filed in the Court of the Sub-divisional Magistrate at N. The allegation was that the wife of the complainant had been enticed away by M and R and taken to place K in another district P where she was sold to J and L. J and L were arrested. There was no evidence on record to show that J and L had any knowledge that the wife of the complainant had been kidnapped or abducted. The Magistrate framed charges under Ss. 373 and 368, Penal Code, against both the accused :

Held, that the only charge which could properly be framed against the accused was a charge under S. 373 and that the Magistrate had no jurisdiction to try that charge. The framing of the charge under S. 368 was little more than a device to justify the Magistrate in assuming jurisdiction in the case. The proceedings in the Court of the Sub-divisional Magistrate at N should, therefore, be quashed. (Lodge and Ellis JJ.) Radharani v. Rahim Sardar,

AIR 1946 Cal 459=50 Cal W N 552=227 I C 212= 47 Cr L J 1020.

——S. 181 (4)—Enticing away married woman—Offence of—Cognisance—Jurisdiction.

A complaint under S. 498, I. P. C., for detaining a married woman for the purpose of illicit intercourse can be enquired into only in the district where such detention took place. (Chevis J.) Jaswant Singh v. Emperor,

AIR 1918 Lah 357=51 P L R 1918=8 P W R (Cr) 1918=44 I C 966=19 Cr L J 438.

——S. 181, Cl. (4) — Kidnapping — Committed without British India—Person detained within British India.

Offences of kidnapping committed outside British India cannot be tried in a British Indian Court though the person kidnapped was conveyed or concealed or detained in British India. (Sharfuddin and Chapman JJ.) Bhutta Santal v. Dama Santal,

AIR 1917 Cal 612 (2)=20 Cal W N 62=33 I C 304= 17 Cr L J 128.

——S. 181 (4)—Actual taking beyond the trial Court's jurisdiction—Trial illegal.

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Where in an appeal a sessions Judge found that the accused though convicted by the lower Court was not guilty of the offence of kidnapping a girl, but that his only offence consisted in easily accepting the statement of person who brought to him the girl and told him that she was his daughter, whereupon the accused registered her for being sent to Ceylon. This event took place at a place outside the jurisdiction of the Court. The sessions Judge set aside the conviction for kidnapping and directed him to be tried for the offence of which he found him to be guilty. Held that so much of the order as related to the commitment for trial, was liable to be set aside as it was without jurisdiction as the place where the offence was committed was outside his jurisdiction. (Benson and Wallis JJ.) Emperor v. Sadaya Pillai,

(1911) 2 M W N 191=12 I C 301=12 Cr L J 533.

——S. 181 (4) — Kidnapping committed in British territory together with shoe beating to foreign territory.

An accused was kidnapped in British India and shoe beaten in Nepal. The Resident granted a certificate for trying the accused in British India, under a charge under S. 363, I. P. C.—Held, that although the offence of kidnapping being committed in India, ought to have been cognizable by a British Indian Court without any certificate yet as it formed part of the same transaction as the offence committed in Nepal, a certificate was necessary, and such certificate was given inasmuch as the certificate gives power to inquire into all the fact connected and pronounce a judgment on the liability of a person as found from all such facts even though a particular section is mentioned in the certificate. So the Court had jurisdiction to convict the accused under S. 355, read with S. 109, I. P. C. (Tudball J.) Krishnanath v. Emperor,

10 I C 959 (2) = 8 A L J 525 = 33 All 514 = 12 Cr L J 359.

8. Effect of trial in wrong Court.

——Ss. 181 (2), 439 — Complainant alleging deposit of ornaments with accused as mere bailment for safe custody — Accused alleging it as one to secure loan — Jurisdiction — Question of fact to be considered, stated — High Court will not take evidence in revision—No revision should be filed before facts are ascertained by trial Court.

Where it is alleged by the complainant that he deposited certain ornaments with the accused merely as bailment for safe custody, while the accused alleges the deposit to be one to secure loan, in determining the question of jurisdiction, the questions of fact that arise for consideration are, as to what precisely constituted the act of receiving the goods in question and where and in what circumstances that act took place; whether both accused or only one of them, took part in that act; where and by whom, the ornaments were retained; where the duty of returning the goods (if they ought to have been returned) ought to have been performed and where the criminal act (if there was one) and its various component parts took place.

It is not the practice of the High Court to take evidence in revision applications and, therefore, the parties should not in the anxiety to quash proceedings at the earliest possible stage, bring revision applications before the High Court before the facts have been fully ascertained. Especially in cases involving the question of jurisdiction under S. 181, Criminal P. C., it is desirable that facts should be fully ascertained and the question of law involved should be dealt with in the regular way in the first instance as part of the trial, before the

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remedy by way of revision is resorted to. (Iqbal Ahmad C. J.; Braund and Dar JJ.) Kanhaiya Lal v. Emperor.

AIR 1942 All 148 = 1942 A L J 85 = 1942 A W R (H C) 42=I L R (1942) All 344=14 R A 389=199 I C 507=43 Cr L J 490 (FB).

——Ss. 181 (4) and 531—Scope of — No failure of justice by trial at wrong place—Effect.

It is doubtful if the words "offence of kidnapping or abduction" in S. 181 (4) include an offence of wrongfully destraining or keeping in confinement a kidnapped person. When a person is tried in wrong Court contrary to the provisions of S. 181 (4), but there is no failure of justice, S. 531 cures the defect and the conviction can be sustained. (Stuart J.) Badlu Shah v. Emperor.

AIR 1924 All 454=81 I C 40=21 A L J 912=46 All 138=5 L R A Cr 49=25 Cr L J 552.

—S. 182.

SYNOPSIS

1. Scope and applicability.
2. Uncertainty as to local area.
3. Offences committed partly in one local area.
4. Continuing offence.

1. Scope and applicability.

——Scope and applicability.

Section 182, Criminal P. C., is intended to provide for the difficulty that would arise where there is an uncertainty as to in which of the different areas an offence is committed. The offence of drinking liquor without a permit is complete the moment the liquor is drunk. There can be no uncertainty of the place of drinking and therefore of the area in which the offence is committed. Hence S. 182 cannot be invoked in such cases to give the Magistrate jurisdiction to try the offence. (Shah C. J., and Chhatpar J.) State v. Pranjivan Gandalal.

AIR 1952 Sau 35=4 Sau L R 264=1952 Cr L J 737.

——Subject of Native State cannot be tried in British India for abetment of offence done in State, though main offence was done in British India.

The Courts in British India have no jurisdiction to try a person who is not a British subject but a subject of a Native State, for the abetment of an offence which was committed in British India in pursuance of the abetment done by his acts in that State. Section 182, Criminal P. C., cannot be invoked in such a case so as to confer jurisdiction on British Indian Courts as the words 'local area' in that section refer to a local area to which the Criminal Procedure Code applies and not to a Native State to which the Code has no application. (Hemeon J.) Hiralal v. Emperor.

AIR 1946 Nag 128=1945 Nag L J 68=I L R (1945) Nag 130.

——Applicability — Offence under S. 5, Child Marriage Restraint Act, 1929 — Jurisdiction, at place where tilak ceremony was performed.

Sections 179 and 182, Criminal P. C., do not apply where the accused are charged under S. 5, Child Marriage Restraint Act, not with the commission of the offence by reason of having performed the tilak ceremony but for the offence of performing, conducting or directing the child marriage and the case is not triable in the place where the tilak ceremony took place but only at the place where the marriage took place. (King J.) Matuk Deo-Narain Singh v. Vinayak Prasad.

AIR 1934 All 829 (1)=57 All 83=1934 A L J 681 = 7 R A 59 (1) = 4 A W R 261 = 150 I C 993 = 35 Cr L J 1175 (1).

CRIMINAL P. C. (V of 1898), S. 182 — 1. Scope and applicability

——Where the District Magistrate is moved against any order of a Magistrate under S. 182 and the contention is that a Court altogether outside the district has jurisdiction to try the case, the District Magistrate deals with the matter only in his revisional powers. (Mukerji and Jack JJ.) Kasim Ali v. Md. Tazafful Hussain.

AIR 1929 Cal 204 = 49 C L J 62=115 I C 95=12 A I Cr R 373=30 Cr L J 401.

——Ss. 185 and 182 — Courts subordinate to two High Courts — Concurrent jurisdiction — Forum of trial—See Criminal P. C., S. 185.

9 Cr L J 581 (Low Bur).

2. Uncertainty as to local area.

——Doubt as to place of offence.

When it is doubtful in which of the several places the offence of misappropriation or breach of trust is committed, it is S. 182 that applies and the offence may be inquired into or tried by a Court having jurisdiction over any such local area. (Mulla J.) Faqir Chand v. Braham Dutt.

1945 A L J 468 = 1945 A W R (H C) 306 = 1945 O W N (H C) 308.

——Criminal breach of trust — Accused, travelling agent, employed by firm at B, selling goods outside B and receiving money—Failure to pay money at B — Evidence as to whether money was actually misappropriated at B or elsewhere, uncertain.

The accused was employed by a firm as a travelling salesman and canvasser. He was given articles (ornaments) and he had sold some in K and returned to B, the place of business of his master. The accused did not pay the money for the articles sold by him and a complaint against him for criminal breach of trust was lodged in B. The trial Court held that the goods were sold and money received outside B, and that therefore it had no jurisdiction to try the suit :

Held, (i) that it may no doubt be difficult for the prosecution to prove that any part of the offence of criminal breach of trust was in fact committed in B and it would have been safer to lay the venue in K or one of the places where the proceeds of the goods sold were admittedly received. The Court there would have jurisdiction having regard to S. 181 (2), Criminal P. C., wherever the actual misappropriation took place ;

(ii) that since there was a doubt as to whether the criminal breach of trust was committed in K or B that would give the B Court jurisdiction under S. 182. (Broomfield and N. J. Wadia JJ.) Anthony D'Mello v. Joseph Mathew Periera,

A I R 1937 Bom 371=10 R B 169=39 Bom L R 620 =ILR (1937) Bom 743=171 I C 42=38 Cr L J 977.

——In cases of criminal misappropriation when time and place of offence is uncertain, S. 182 would apply. (Sulaiman C. J., Mukherji and King JJ.) Kashi Ram Mehta v. Emperor,

AIR 1934 All 499=56 A 1047=1934 A L J 308 = 6 R A 902=3 A W R 506=149 I C 420 =35 Cr L J 982 (FB).

——Ss. 182, 531—Jurisdiction—Criminal breach of trust —Embezzlement made at several places—Penal Code (Act XLV of 1860), S. 408.

The accused was employed as an agent by a firm in Mirzapur. Goods were entrusted to him for sale in various districts in Lower Bengal, and from time to time, as he sold goods, he remitted money to his employers at Mirzapur. On being called upon to furnish accounts, he offered to furnish Rs. 500 as a deposit, but did not submit any account or pay even that amount. The embezzlements complained of occurred at various places in Lower Bengal. Held that the conduct of the accused disclosed a dishonest intention and therefore the offence was not of a civil nature. The Magistrate at Mirzapur had jurisdiction to try the case because the embezzlement must have taken place at Mirzapur or at one of the various other places where the accused travelled in order to sell the goods. Held further that, even if there were any irregularity, S. 531, Crim. Pro. Code, covered it. (Tudball J.) Mahadeo v. King-Emperor,

7 A L J 319=32 A 397=6 Ind Cas 563=11 Cr L J 372.

CRIMINAL P. C. (V of 1898), S. 182—2. Uncertainty as to local area

3. Offences committed partly in one local area.

——Complaint that certain officer had received illegal gratification written and posted at Kombakonam and addressed to I.-G. of Police, Madras—Complaint found to be groundless—Magistrate at Kumbakonam has no jurisdiction to try offence under S. 211, Penal Code : See Penal Code (1860), S. 211,

AIR 1948 Mad 292=49 Cr L J 335.

——False statement in balance sheet — Complaint for— Jurisdiction — Company situated in Narayanganj Subdivision, having its registered office at Dacca Complainant receiving his copy of balance sheet under S. 131 (3), Companies Act, 1913, in place under jurisdiction of Narayanganj Court—Balance sheet alleged to be signed in Calcutta — Narayanganj Court held had jurisdiction to deal with complaint : See Companies Act (1913), S. 282,

52 C W N 889 (Dacca).

——Cheating—Letter from Nandurbar to Bombay ordering goods — Accused committing offence of cheating— Place of trial.

The accused from Nandurbar sent letters to various merchants of Bombay ordering goods from them and promising to pay their bills on receipt of the goods. When the goods were received by him, he accepted them and absconded. A complaint of cheating was filed at Nandurbar :

Held, that the posting of the order by the accused at Nandurbar was one of the series of acts which went to make up the offence of cheating. The offence could be tried either in Bombay or in Nandurbar and the Magistrate at Nandurbar could take cognizance. (Divatia and Lokur JJ.) In re Hormasji Ardeshir,

A I R 1943 Bom 183=16 R B 52=45 Bom L R 297 =207 I C 613=44 Cr L J 664.

——Cheating—Case where to be tried.

Where the accused was paid some money by the complainant at Trichinopoly, but the spurious coins were handed over by the accused to the complainant in another district :

Held, that the complainant was cheated and parted with money at Trichinopoly, and that the Sub-Divisional Magistrate of that place could try the case. (Lakshmana Rao J.) In re Natesa Padayachi,

A I R 1940 Mad 649=1940 M W N 391=51 M L W 552=(1940) 1 M L J 760=1940 M Cr C 109.

——Conspiracy.

Where it is evident from the correspondence and other facts that a place was one of the centres of a conspiracy and the accused frequently wrote letters to persons at that place, the Sessions Court at that place has jurisdiction to try the accused for an offence under S. 121-A, Penal Code. (Thom J.) Manabendra Nath v. Emperor,

A I R 1933 All 498=6 R A 772=148 I C 833=35 Cr L J 768.

4. Continuing offence.

——Continuing offence—Abduction.

CRIMINAL P. C. (V of 1898), S. 182—4. Continuing offence

Though the offence of kidnapping from lawful guardianship is not a continuing offence the offence of abduction is such a continuing offence and it can be tried in the Court within whose jurisdiction the original abduction took place. (Nagarkar J. C.) Gul. Mohd. v. Crown,

A I R 1951 Ajmer 68 = 1948 A M L J 40 = 52 Cr L J 891.

——Rioting — Temporary dispersal by police firing — Re-assembling and rioting continued — Both occurrences held parts of one continuous rioting.

An unlawful assembly which had assembled at about 8 a. m., and which did considerable damage by way of injury to persons and damage to properties temporarily dispersed when there was shooting by the police but they formed immediately thereafter into smaller groups and continued to be on the spot till about 10 a. m., when the railway train started and there was again pelting of stones at the train.

Held, that both the occurrences, one before firing and the other after firing were really parts of one continuous rioting and the third clause of S. 182 applied. (Govindarajachari J.) In re Kista Pillai,

A I R 1949 Mad 94 = 1948-2 M L J 83 = 1948 M W N 523=50 Cr L J 106.

——Conspiracy—Whether can be continuous.

Conspiracy is a substantive offence. But in certain circumstances, it might be a continuing offence, for example, while it is in the process of being hatched, and an agreement to participate in the object of the conspiracy by each of the conspirators whose assistance is subsequently invoked does not constitute an overt act committed in pursuance of the conspiracy but is an integral part of the conspiracy itself. (O' Sullivan J.) Mohd. Ayub Khan Shah Mohd. Khan v. Emperor,

A I R 1946 Sind 1 = I L R (1945) Kar 275 = 1946 Sind Rul 112=222 I C 431 = 47 Cr L J 455.

——Held, that the offence of abduction being a continuing one, the Sessions Judge at Moradabad had jurisdiction to try C, D and E also, under S. 180 (a). (Grimwood C. J. and Sen J.) Emperor v. Nanhua Dhimar,

A I R 1931 All 55=1930 A L J 1485=53 A 140=Ind Rul (1931) All 358=131 I C 246=32 Cr L J 690.

——Jurisdiction.

In a case where Railway receipts were sent from Harda and Rs. 40,000 were obtained on their credit at Bombay, it was held that both Bombay and Harda Courts have jurisdiction to try the case. (Batten J. C.) Shamji v. Emperor,

A I R 1922 Nag 40=65 I C 994=5 N L J 16=23 Cr L J 210

—S. 183.

See also ibid, S. 531.

——Accused visiting Ajmer without surrendering permit at Calcutta — Jurisdiction of Ajmer Court to try offences —See Influx from Pakistan (Control) Act (1949), Ss. 3, 5

A I R 1952 Ajmer 5=1952 Cr L J 151.

——Theft on running train—Place of trial.

According to S. 183, Cr. P. C., the offence committed during a journey may be tried by any Court through or into the local limits of whose jurisdiction the offender or the thing in respect of which the offence was committed passed in the course of the journey. (Kidwai J.) Sat Narain v. The State,

1951 All W R (H C) 256=1951 All Cr C 54.

——Not applicable.

A carrier, who was entrusted with goods to be delivered at a particular place, had to journey through British as well as foreign territory. At the place of delivery he could not deliver the goods intact, and was accused of

CRIMINAL P. C. (V of 1898), S. 183

breach of trust. There was no evidence to show when and where the offence was committed the only evidence of the breach of trust being the failure to deliver intact:

Held S. 183 does not apply in such cases: 38 Mad 639; A I R 1925 Mad 23, Dist. and A I R 1923 Lah 487, Diss. from. (Wallace J.) Public Prosecutor v. Podimonu Beary

AIR 1928 Mad 1136=114 I C 238=1928 M W N 791 =52 Mad 61=1 M Cr C 167=28 M L W 843=12 A I Cr R 138=50 M L J 499=30 Cr L J 245.

——Offence committed in course of journey from one place to another can be tried by court having jurisdiction at latter place. (Kennedy J. C. and Raymond A. J. C.) King-Emperor v. Moulabux

AIR 1925 Sind 177=77 I C 727=25 Cr L J 439.

——S. 183 — Scope — Whether offence committed in British India or outside doubtful — Benefit of doubt should be given.

The section applies only when offence is committed in British India. Where it was doubtful as to whether the offence was committed in British India or outside, the benefit of doubt was given to the accused. (Motisagar J.) Nadar v. Emperor

AIR 1923 Lah 487=73 I C 323=24 Cr L J 579.

——Where a theft is committed from a running train, any Court through whose jurisdiction the train passes during the journey may try the offence, no matter in whose jurisdiction the offence was committed. (Abdul Qadir J.) Lazarus Megh Nath v. Emperor

AIR 1924 Lah 351=71 I C 797=24 Cr L J 253.

——Offence committed on a journey—Venue of trial.

Where the offence is committed on a journey, the only Courts competent to try the case, are the Courts through or into the local limits of whose jurisdiction the offender in the course of the journey he was performing passed at the time the offence was committed. The journey referred to in the first part of S. 183 is the journ y which the offender is in the course of performing; and the words "that journey" at the end of the section refer to the same journey. (Henderson and Geidt JJ.) Aminulla Serang v. P. M. Guha

1 C L J 334=2 Cr L J 411.

—S. 184.

——Offences under Ss. 112, 113, Railways Act—Opportunity to produce evidence should be given—See Railways Act (1890), S. 134

AIR 1954 All 12=1953 Cr L J 1855.

—S. 185.

——Legislative change.

[The section has been redrafted so as to make it clear that one High Court cannot transfer a case to itself from another High Court and to set at rest the conflict of decisions between Madras and Calcutta High Courts: Ed.]

——S. 185 (1) — Necessity to supply High Court with official records and materials.

The jurisdiction which the High Court exercises under S. 185 (1) is a jurisdiction of every great responsibility where the Court has to decide which of the two or more Subordinate Courts will be competent to enquire into and try offences and unless proper steps are taken to supply the Court with official records and materials in coming to a right decision on the point, there may be good deal of confusion. (P. B. Mukharji and P. N. Mookerji JJ.) State v. Sadananda Darji

AIR 1952 Cal 562 = 1952 All W R (Sup) 39 = 1952 Cr L J 1253.

——Ss. 185 and 439—Trial at, two places under jurisdictions of different High Courts — Power to interfere at interlocutory stage not exercised where evidence was not

CRIMINAL P. C. (V of 1898), S. 185

fully recorded nor was charge framed. (Brij Mohan Lall J.) State v. Keshari Singh

1951 R D (H C) 48.

——Jurisdiction of two courts.

S. 185, Criminal P. C., empowers the High Court to decide on the ground of general convenience of parties or witnesses which of two courts which have jurisdiction to enquire into and try an offence but which are under the jurisdiction of different High Courts, should enquire into or by it. (Broadway J.) Gurdit Singh v. Emperor

AIR 1917 Lah 237=1 P W R Cr 1917=24 P R Cr 1917=74 P L R 1917=39 I C 482=18 Cr L J 514.

—— Ss. 185, 526, 527 — Scope of — Jurisdiction of High Court to transfer.

Only S. 526, and not S. 185 deals with the High Court's power to transfer. S. 185 gives the High Court no jurisdiction to transfer a case from a Court situated out of its jurisdiction and subordinate to another High Court. But the High Court can prevent the assumption by a court subordinate to it, of jurisdiction in a case proper to be tried by another Court which may or may not be subordinate to the High Court : 20 I C 222; 2 I C 861, Diss. from : 19 A 111; 5 A L J 333, Dist. (Sadasiva Iyer and Napier JJ.) Mahomed Ghowse v. Nathu Vallabhiji

AIR 1918 Mad 1183 = 40 Mad 835 = 5 L W 349= 37 I C 516=18 Cr L J 148.

——Ss. 185 and 527 — "Doubt" meaning of — Use of S. 185 by the High Court—Construction of S. 185.

Per Curiam, (Woodroffe J., dissenting) — S. 185 includes all cases of doubt not only as to jurisdiction of one or another Court but also as to comparative suitability of this or that Court from the practical stand point of convenience or expediency for purposes of trial : 41 C 305, Diss. 20 I C 361, Approved. Woodroffe J.—"Doubt" in S. 185 is only about jurisdiction order. An order under S. 115 regarding an enquiry or trial in a Court not subordinate to itself can be made by the High Court under S. 185, Criminal P. C., and so in the case of proceedings instituted under Ss. 409 and 420, I. P. C. in a Court in the Bombay Presidency against an accused residing within the Criminal appellate jurisdiction of Calcutta High Court. The Full Bench of the Calcutta High Court made an order under S. 185, Criminal P. C., that the case should be tried by the Chief Presidency Magistrate of Calcutta. "Doubt" in S. 185, Criminal P. C. does not mean doubt as to the acts constituting the offence and the place of their commission. The object of the above section is to determine cases where the facts said to constitute jurisdiction are doubtful and not to cut down jurisdiction which admittedly exists. Per Sanderson C. J., and Newbould J. — The High Court should be sparing in exercising jurisdiction under S. 185, Criminal P. C., in cases of proceedings against an accused residing within its Criminal appellate jurisdiction being instituted in a competent Court subordinate to another High Court. S. 185 of the Code should not be narrowly construed. (Sanderson C. J., Woodroffe, Mookerjee, Chaudhury and Newbould JJ.) Charuchandra v. Emperor

AIR 1917 Cal 137 = 44 Cal 595 = 21 C W N 320 = 25 C L J 165=37 I C 165=18 Cr L J J 81 (FB).

— Jurisdiction—Doubts as to—Decision of High Court.

Where in a case under S. 408, I. P. C. instituted in one of the Presidency Magistrate's Courts of Calcutta, it was doubtful whether the Courts in Calcutta or in the District of 24 Pergannas had jurisdiction, the High Court directed under S. 185, Criminal P. C., that the case should be enquired into and tried by the Court within the District of 24 Pergannas. (Sanderson C. J. and Richardson J.) Benode Behari Mal v. Ganesh Chandra

21 C W N 434.

Cri. D. 170 & 171

CRIMINAL P. C. (V of 1898), S. 185

——Applicability of—Proceedings under Chap. XII.

The section does not deal with proceedings under Chap. XII but only with cases where some offence is being enquired into or tried. (Knox J.) Rudra Partap Sahi v. Dawan Singh

AIR 1914 All 473 = 12 A L J 390 = 24 I C 608 = 15 Cr L J 520.

——Jurisdiction of High Court to determine — Several courts having jurisdiction.

The decision of the High Court within the local limits of whose appellate jurisdiction the offender actually is, should be sought only in case of a doubt as to the Court by which the offence should be enquired into or tried, S. 185, Criminal P. C. does not warrant interference by the High Court when several courts have concurrent jurisdiction, merely on the ground of convenience. (Imam and Chapman JJ.) Razani Benode Chakravarti v. All India Banking and Insurance Co.

AIR 1914 Cal 386 = 41 Cal 805 = 17 C W N 1207= 22 I C 192=15 Cr L J 48.

——Jurisdiction—Transfer—Convenience.

When the offence might be said to have been committed at either of two places and it is more convenient to have it tried in one of them, an order under S. 185 of the Code can properly be made transferring the case to that place. (Chitty and Richardson JJ.) Hiran Kumar v. Mangal Sen

17 C W N 761=20 I C 222=14 Cr L J 398.

——Courts subordinate to two different High Courts — Concurrent jurisdiction—Forum of trial.

Where two Courts subordinate to two different High Courts have jurisdiction to try an offence, the High Court, within the local limits of whose jurisdiction the offender actually is, is empowered under S. 185 read with S. 182, to decide by which Court the offence shall be tried. S. 185 is not restricted to cases in which there is doubt as to whether one Court or another has jurisdiction, the section refers to the preceding provisions of the Chapter, one of the provisions of which is S. 182. The word "should" includes the case of a choice on the ground of public policy. Therefore, S. 185 is also applicable to cases in which the doubt is on the point whether the choice between the two Courts, both of which have concurrent jurisdiction should be decided on the ground of public convenience. (Irwin J.) King-Emperor v. Chaichal Singh

5 L B R 17=2 I C 361=9 Cr L J 531.

——Jurisdiction of Magistrate to hold trial—Fraudulent realization of money in respect of a hundi—See Criminal P. C., Ss. 179, 185

7 Cr L J 394 (All).

—S. 186

See also Criminal P. C., S. 83

——Ss. 186, 85 and 86—Effect of Ss. 85 and 86—Magistrate acting under S. 86, cannot hold enquiry under S. 186—His duty pointed out — S. 186 does not override Ss. 75 to 86.

The effect of Ss. 85 and 86, Criminal P. C., is that the person arrested outside the local limits of the jurisdiction of the Court issuing the warrant has to be taken before a Magistrate or Commissioner or District Superintendent of Police, and such Magistrate or Commissioner or District Superintendent has to satisfy himself that the person arrested appears to be the person intended by the Court which issued the warrant, and when so satisfied, he is bound to direct the removal of the arrested person in custody to the Court which issued the warrant. The Magistrate is not entitled to institute an enquiry under S. 186, Criminal P. C., which deals with a case in which

CRIMINAL P. C. (V of 1893), S. 186

the Court which has jurisdiction, has not taken cognizance of the matter and the offence is brought to the notice of Magistrate who is not competent to try it, in which case he may send it to a Magistrate who is competent. Section 186 does not override the provisions of Ss. 75 to 86 which deal with the execution of warrants to arrest. (Beaumont C. J. and Wassoodew J.) Sagarmal Khemraj In re.

AIR 1940 Bom 397 : 42 Bom LR 904 : 13 RB 199 : ILR (1941) Bom 16 : 191 IC 605 : 42 Cr LJ 205.

——The wording of the section itself shows that it relates to offences which the Magistrate knows at the outset to have been committed, if at all outside the limits of his jurisdiction. The marginal note makes the meaning clearer and still more the references to the section in Sch. III and S. 529 of the Code. (Walmsley and Suhrawardy JJ.) Amulya Charan Dutt, In re

AIR 1923 Cal 401 : 76 IC 424 : 25 Cr LJ 184.

——S. 188.

SYNOPSIS

1. Scope and applicability.
2. Offences committed outside India.
3. "At which he may be found".
4. Certificate of Political Agent.
5. Certificate essential to jurisdiction.
6. Certificate necessary for inquiry and trial.
7. "Notwithstanding anything".
8. Necessity of express certificate.
9. Form of certificate.
10. Contents of certificate.
11. Political Agent — Who is.
12. Offences committed on the high seas.
13. Offences under Child Marriage Restraint Act 1929.

1. Scope and applicability.

——As amended by V. P. Ordinance 15 of 1948 and V. P. Ordinance 27 of 1949 — Effect.

Items 62 and 63 of S. 2 of Ordinance No. 15 of 1948 would seem to indicate that the jurisdiction which the criminal Courts of Vindhya Pradesh previously had to try extra-territorial offences was probably lost thereby. If so, that jurisdiction was restored under Ordinance 27 of 1949 by the amendment thereby of the said Items 62 and 63 thus bringing it into line with S. 188, Cr. P. C., with the requisite adaptations. Hence, the power of the Vindhya Pradesh Courts to hold trials for extra-territorial offences which was probably interrupted from 31-12-1948 was restored on 3-5-1949 with retrospective operation, i.e. as from the date of the prior Ordinance, i.e. 31-12-1948. (Patanjali Sastri C. J., B. K. Mukherjea, Bose, Ghulam Hasan and Jagannadhadas, JJ.) Rao Shiv Bahadur Singh v. State of Vind. Pra.

AIR 1953 SC 394 : 1953 SCA 803 : 1953 SCJ 563: 1953 SCR 1188 : 1953 Cr LJ 1480 (SC).

——Conspiracy to obtain illegal gratification at Rewa — Bribe-taking at Delhi — Competency of Rewa Court to try offence committed at Delhi —

CRIMINAL P. C. (V of 1898), S. 188 — 1. Scope and applicability

Evidence Act (1872), S. 10 — Penal Code (1860), S. 4.

Where A was charged with criminal conspiracy under S. 120B read with S. 161, Penal Code at Rewa (V. P.) to obtain an illegal gratification and the actual bribe-taking was committed at Delhi:

Held, (i) that general rules of logic, and S. 10, Evidence Act, enable the Rewa Court and, in fact call upon it, to examine whether the consequences and incidents at Delhi are corroborative to the existence, and the nature of conspiracy itself.

(ii) that S. 188, Cr. P. C. and S. 4, Penal Code, gave jurisdiction to Rewa Court to try the accused for his doing at Delhi. (Krishnan, J. C.) State of V. P. v. Shiva Bahadur.

AIR 1951 VP 17 : 52 Cr LJ 561.

——Section if wholly extra-territorial in its operation.

See Penal Code (1860), S. 4 (1).

AIR 1950 Mad 22.

——Objection to jurisdiction applying to some charges — Whole case is not without jurisdiction:

See ibid, S. 177.

AIR 1949 Mad 3 : 50 Cr LJ 70.

——Number of charge-sheets originally filed against accused — All charged with being members of gang — Only one charge can be framed in Sessions Court and proof of association outside British India to commit crimes is not barred under S. 188, Criminal P. C., read with Penal Code, S. 4. (Horwill, J.) Arumugam v. Emperor.

AIR 1938 Mad 858 : 1938 MWN 595 : 48 LW 639 : 11 RM 700 : 180 IC 431 : 40 Cr LJ 355.

——Certificate by Local Government if enough — Object of certificate.

The object of requiring the certificate of the Political Agent or the Local Govt., as the case may be, is to prevent the accused being tried over again for the same offence in two different places. This object is sufficiently secured by requiring the sanction of the Local Govt. in the cases of offences committed in territories where there is no official representative of the British Indian Govt., by refusing to extradite the offender if he is wanted there subsequent to his trial in a British Indian Court, or by refusing to sanction a prosecution against him if he has been already tried in foreign territory in respect of the same offence. (Rup Chand J. C. and Mehta A. J. C.) Jeramdas Vishendas v. Emperor.

AIR 1934 Sind 96 : 28 SLR 27 : 7 RS 117 : 153 IC 60 : 36 Cr LJ 240.

——Person abroad may, by the employment as well of a conscious as of an unconscious agent, render himself amenable to the law of British Courts or British Indian Courts when he comes within the jurisdiction of such Courts. (Rup Chand J. C. and Lobo, A. J. C.) Gokaldas Amarsee v. Emperor.

AIR 1933 Sind 333 : 6 RS 180 : 27 SLR 392 : 148 IC 135 (2) : 35 Cr LJ 585.

CRIMINAL P. C. (V of 1898), S. 188 — 1. Scope and applicability

——Where the dacoity was committed in a running train in British India and the murder was committed in a Native State, the British Indian Court has jurisdiction to try the offenders under S. 396, I. P. C., without a certificate under S. 188. (Tek Chand and Monroe, JJ.) Punjab Singh Ujagar Singh v. Emperor.

AIR 1933 Lah 977 : 6 RL 339 : 35 PLR 51 : 15 Lah 84 : 147 IC 2 : 35 Cr LJ 322.

2. Offences committed outside India.

——R, resident in Pakistan committing theft in Pakistan of property of resident in India before Aug. 1947 — R migrating to India — Sanction for prosecution in India held could not be given.

'R' was a resident and native of Multan District now in Punjab, Pakistan. It was alleged that after the disturbances began in August 1947, R somehow managed to stay and preserve his life, broke into the local branch of the Bank whose head office was in Bombay and removed some bales of cotton lying in the Bank's godown. Later in November 1947 R left Pakistan and came to Bombay and ultimately settled in Hotel in the District of Gurgaon in the Punjab (India). After learning of the alleged theft the Bank applied in February 1950 to the Punjab Government (India) under S. 188, Cr. P. C., for R's prosecution for the alleged offence of theft. Sanction was accorded on 12th Feb. 1950 for R's prosecution in India on charges under Ss. 454 and 380, I. P. C.:

Held that until R actually left Pakistan and came to India he could not possibly be said to have become a national or a citizen of India. In fact his Indian citizenship did not commence until the Constitution came into force, and unless and until he had actually migrated to India he could not even be regarded a potential or prospective citizen of India. Moreover, if the offence was committed in a foreign country over which the Government of India had no control, the second proviso to S. 188 could have no effect, since it would not be at all binding on the foreign Government, which could still prosecute the offender for the offence committed within its territory, if could lay hands on him, and ignore the proceedings in the Court in India.

Another aspect of the matter was that in February 1950, the Punjab Government (India) could not under S. 188 as it then stood after the amendment in 1948, validly sanction prosecution of the accused for offence committed in Pakistan in November 1947 before the amendment. The wording of the amended S. 188 could not be treated as being of retrospective application, and although at the time of the sanction in February 1950 R might have been covered by the words "British subject domiciled in India" he was certainly not a British subject domiciled in India in November 1947 before he had left Pakistan to come to India. The sanction by the Provincial Government could not be given in February 1950 for R's prosecution on the assumption that the 1947 wording was applicable in his case, namely "a Native Indian subject of Her Majesty." The words of S. 188, were not applicable to R on a presumption that no Hindu or Sikh could possibly remain in Pakistan and that every such person must have been bent upon making his way to India as quickly as possible, and that merely by forming an intention to come to India he became an Indian subject and was never even for a moment a subject of Pakistan. Such a presumption could not be justified.

CRIMINAL P. C. (V of 1898), S. 188 — 2. Offences committed outside India

(Scope and applicability of S. 188, Cr. P. C., after and before amendment in 1947 indicated). (Falshaw, J.) Ram Narain v. Central Bank of India Ltd., Bombay.

AIR 1952 Punj 178 : ILR (1952) Punj 326 : 1952 Cr LJ 744.

——Accused committing offence in Cochin and Travancore 'native Indian subject' within S. 4(1), Penal Code, as it stood then — Sanction under S. 188, Cr. P. C., given by Govt. of Madras on 25-5-1948 — Passing of Indian Independence Act and accession of Cochin and Travancore after alleged offence and before 25-5-1948 — Criminal Court in province of Madras if could try accused. See Penal Code (1860), S. 4 (1).

AIR 1950 Mad 22 : 51 Cr LJ 231.

3. "At which he may be found."

——"Found" means "found" by Court — How accused got there, is immaterial.

"Found" in S. 188 means found by the Court at the time the matter comes up for trial, that is to say, any Court which is otherwise competent to try the offence can take seisin the moment the accused appears in its presence. How the accused gets there is immaterial. It does not matter whether he comes voluntarily or in answer to a summons or under illegal arrest. It is enough that the Court should find him present when it comes to take up the matter. The authority which has to do the finding is the Court and not any other authority. This may give several Courts jurisdiction. There is no harm in this. It is common for different Courts to have concurrent jurisdiction in certain matters. Any conflict which arises can always be resolved by some higher tribunal which can decide where the accused should be tried. If Court A "finds" an accused present and enters upon the trial, it is evident that Court B would not entertain the same matter. But if it did, a reference to a higher tribunal, such as the High Court would at once set the matter right.

Offence under Marriage Restraint Act was committed in Bhopal State. Accused resided at Amraoti. He attended the Court at Wardha upon the summons served on him by the police at Amraoti. The question was whether the accused was "found" at Amraoti or at Wardha.

CRIMINAL P. C. (V of 1898), S. 188—3. "At which he may be found"

Held that the accused was "found" at Wardha which Court therefore had jurisdiction to try him; and not at Amraoti where the summons was served. AIR 1936 Nag. 152; 35 Bom. 225; 6 Bom. 622; (1858) 27 LJMC 48; 13 Bom. 147; and (1850) 19 L. J. M. C. 31, Rel. on. (Bose, J.) Sahebrao Bajirao v. Suryabhan Ziblaji.

AIR 1948 Nag 251 : 1948 NLJ 244 : 1948 AWR Sup 92 : 1948 OA Sup 92 : ILR (1948) Nag 334 : 49 Cr LJ 376.

——Jurisdiction — Foreign subject — Irregular arrest.

Subject of country A committing offence in country B — Police in B arresting offender irregularly in A — Offender, however, validly surrendered by authorities of country A to the trying Court in country B:

Held, that the proceedings were perfectly regular and in order. The validity of his trial or his conviction in B was in no way affected by the irregularity of his arrest and this irregularity was no plea to the jurisdiction of the Court to try him.

(The trial was held to be perfectly valid.) (Lords Macmillan, Wright, Porter, Clauson and Sir George Rankin) Parbhu v. Emperor.

AIR 1944 PC 73 : 11 BR 94 : 57 LW 408 : 48 CWN 493 : 1944 ALJ 385 : 1944 OWN 502 : 1944 AWR 38 : 46 Bom LR 838 : ILR (1944) Kar 269 : 71 Ind App 75 : 215 IC 63 : 46 Cr LJ 119 (PC).

——Jurisdiction conferred by S. 188 — Nature of —Offence committed by European British subject outside British India — Certificate under S. 188 —Accused brought to be tried in British India— Question as to his claim to be tried as European subject, when arises — Certificate under S. 188— Effect of.

For the purposes of criminal jurisdiction, an accused person is found wherever he is actually present, whether or not he has been brought there against his will.

Where a European British subject who commits an offence outside British India is brought for trial in British India on a certificate being furnished by the Political Agent is required by the proviso to S. 188, Criminal P. C., the certificate operates and the case may be dealt with as if the offence had been committed in British India "when any British subject commits an offence in the territories of any Native Prince or Chief in India," that is, whether he is an Indian British subject or a European British subject, his claim to be tried as a European British subject arises after the certificate has been furnished and it has been decided to deal with him as if the offence had been committed in British India. It will be open to him then at his trial in the Court where he has been directed to stand his trial to plead that he is a European British subject, and the provisions of Chap. XXXIII, Criminal P. C., will then operate. The certificate under S. 188, Criminal P. C., does not invest the District Magistrate with jurisdiction to order the trial of a European British subject before a Magistrate of the First Class in British India. If the accused is a European British subject, the Magistrate can do no more than hold an enquiry and commit him for trial; he cannot try him himself. (Grille, J.) W. Y. Zincke v. Emperor.

AIR 1936 Nag 152 : 9 RN 26(2) : 164 IC 687 : 37 Cr LJ 979.

——Offence committed outside British India.

When a man is charged in India with an offence under the Penal Code he cannot be protected by saying that he was brought there illegally from a foreign country where he committed the offence. (Scott, C. J. Chandavarkar and Heaton, JJ.) Emperor v. Vinayak Damodhar.

35 Bom 225 : 13 Bom LR 296 : 10 IC 956 : 12 Cr LJ 356.

4. Certificate of Political Agent.

——Offence in Native State — Trial in British India — Certificate of Political Agent.

A subject of a Native State arrested in Br. India cannot be tried in Br. Indian Court for an offence committed in that State without the certificate of the political Agent of the State or the sanction of the Local Government as required by S. 188. An agreement between a Native State and the authorities of the Br. Indian District, conceding to the Br. Indian Courts the right to try subjects arrested in Br. India, cannot take the place of the certificate or sanction under S. 188 (Wallach, J. C.) Nandu v. Emperor.

AIR 1919 All 44 : 42 All 89 : 17 ALJ 1055 : 52 IC 668 : 20 Cr LJ 700.

——Kidnapping — Offence in Native State.

An offence committed in Native State cannot be tried by Br. Courts without a certificate of the Political Agent. Kidnapping not being a continuing offence, the fact that the person committing it in a Native State is arrested in Br. India does not give jurisdiction to the Br. Indian Court. (Lindsay, J.) Narain v. Emperor.

AIR 1919 All 370 : 41 All 452 : 17 ALJ 450 : 50 IC 164 : 20 Cr LJ 276.

——Application — Of the proviso.

The proviso to S. 188, is universal in its application and is not restricted to Native State in India. (Pratt, J. C. and Hayward, A. J. C.) Imperator v. Chellaram.

6 SLR 260 : 19 IC 954 : 14 Cr LJ 298.

5. Certificate essential to jurisdiction.

——Sanction by Government.

Where a subject of His Highness or a servant of the Jaipur Government commits an offence without and beyond the limits of Jaipur State he can be tried in Jaipur State provided sanction

CRIMINAL P. C. (V of 1898), S. 188—5. Certificate essential to jurisdiction

of the Government of Jaipur is secured under S. 188, Criminal P. C.

A Magistrate or a Court has no jurisdiction to entertain a complaint before the requisite sanction has been obtained. The want of such sanction is not a mere irregularity which can be cured by subsequent production of the same. Case law referred. (Sharma and Bapna, JJ.) Rughnath v. Durga Devi.

1946 JLR 294.

——Ss. 188, 537, 179 — S. 188, scope — Absence of certificate — Irregularity, if curable under S. 537.

The provisions of S. 188, Criminal P. C., are mandatory and the absence of the certificate of the Political Agent or the British Envoy required by S. 188 is an absolute bar to the trial of a case to which the provisions of that section apply. The question of certificate goes to the root of the case. S. 537, Criminal P. C., cannot be used to cure a clear illegality or a clear transgression of the mandatory provisions of law. Section 179, Criminal P. C., also has no bearing to such cases. (Thomas, C. J.) Mohammad Zaman v. Emperor.

AIR 1945 Oudh 231 : 1945 OWN (C.C.) 115 : 1945 AWR (CC) 74 : 20 Luck. 370 : 18 RO 89 : 220 IC 38: 46 Cr LJ 650.

——Absence of certificate — Effect.

A Magistrate has no jurisdiction to try accused in the absence of a certificate or sanction required by S. 188, Criminal P. C., a trial held without such certificate or sanction is void. (Almand, J. C. and Mir Ahmad, J.) Khawas Habib v. Emperor.

AIR 1940 Pesh 4 : 12 R Pesh 41 : 188 IC 290 : 41 Cr LJ 565.

——Ss. 188 and 537 — No certificate under S. 188—Defect, if curable under S. 537 — Arrest of accused on 27th March 1933 — Certificate by Government on 15th March 1933 — Objection not taken during that period but taken subsequently —Defect if cured under S. 537.

The absence of a certificate under S. 188, Criminal P. C. is curable under S. 537, Criminal P. C. if it has not in fact occasioned a failure of justice. The absence of a certificate between 27th March 1933 (the date of the appellant's arrest) and 15th May 1933, when the Local Government granted the certificate was a defect curable under S. 537, Criminal P. C. and having regard to the omission to raise any objection to its absence before 15th May 1933 no failure of justice is occasioned by the absence of the certificate between the above-mentioned dates and the defect is thus cured by S. 537, Criminal P. C. (Hilton, J.) Mohammad Qasim Khan v. Emperor.

AIR 1934 Lah 827 : 7 RL 454 : 37 PLR 419 : 16 Lah 73 : 153 IC 747 : 36 Cr LJ 430.

——Excise offence in Native State—Trial in British India — Absence of certificate from Agent to Governor-General under S. 188 — Accused discharged—Certificate granted after one year:

CRIMINAL P. C. (V of 1898), S. 188—5. Certificate essential to jurisdiction

Held, that the subsequent certificate did not amount to a revival or continuation of the original proceedings. The trial, therefore, was without jurisdiction having been commenced after one year from the date of the commission of the offence without the sanction of the Local Government. (Jailal, J.) Bhan Singh v. Emperor.

AIR 1933 Lah 659 (2) : Ind Rul (1933) Lah 343 : 143 IC 341 : 34 Cr LJ 578.

——S. 188, Proviso 1 — Dishonest retention of property in French territory — Trial in British India without certificate — Bar.

A conviction of a British Indian subject for dishonest retention of property in French territory, in the absence of a certificate of the Political Agent of the French territory, is illegal, as a trial without such certificate is barred by S. 188, Proviso 1, Criminal P. C. (Burn, J.) In re Narayanaswamy Padayachi.

AIR 1933 Mad 461 (1) : 1932 MWN 1229 : Ind Rul (1933) Mad 281 : 143 IC 190 : 34 Cr LJ 545 (1).

——Certificate necessary.

The framing of an alternative charge under Ss. 379 and 411, I. P. C., does not confer jurisdiction on a Magistrate when the offence under S. 411 is committed beyond the limits of British India, for, under the express terms of S. 188, he cannot exercise it without a certificate from the Political Agent. (Patkar and Wild, JJ.) Emperor v. Sana Mathur.

AIR 1930 Bom 155 : 1930 Cr C 479 : 125 IC 417 : 32 Bom LR 98 : 54 Bom 171 : 31 Cr LJ 833.

——Vitiated.

If an offence of forgery is committed in a Feudatory State, then under S. 188 of the Cr. P. Code the accused cannot be tried without the sanction of the Political Agent of that State or the Local Government. The omission to obtain such a sanction vitiates the trial and the conviction of the accused of that charge. (Jwala Prasad and James, JJ.) Ram Prasad Guru v. Emperor.

AIR 1930 Pat 501 : 122 IC 155 : 11 Pat LT 433 : 1930 Cr C 929 : 31 Cr LJ 364.

——Void.

The proceedings of a Magistrate committing an accused person to the Sessions Court, before a certificate under S. 188 is obtained, are void and illegal and the commitment may be quashed. AIR 1925 Lah 185, Foll. (Campbell and Addison, JJ.) Buta Singh v. Emperor.

AIR 1926 Lah 582 : 7 Lah 396 : 27 PLR 447 : 97 IC 752 : 27 Cr LJ 1168.

——Void.

The defect as to absence of a certificate of Political Agent as required by S. 188 is not curable by the subsequent production of the same. 11 PR (Cr.) 1899, Foll.; 13 Mad 423 and 19 All 109, Appl. (Campbell, J.) Ram Charu v. King-Emperor.

AIR 1925 Lah 185 : 5 Lah 416 : 92 IC 170 : 27 Cr LJ 218.

CRIMINAL P. C. (V of 1898), S. 188 — 5. Certificate essential to jurisdiction

——Can be continued after sanction.

The sanction of a Political Agent or the Local Government as the case may be is necessary for the prosecution of a native Indian subject committing an offence without and beyond the limits of British India. But the proceedings in such a case may be continued on the subsequent obtaining of the sanction even though the absence of such sanction will come in the way of the inquiry being proceeded with. (Kincaid, J. C. and Aston, A. J. C.) Allibhoy Jivraj v. Emperor.

AIR 1925 Sind 88 : 81 IC 108 : 19 SLR 122 : 25 Cr LJ 620.

——Cure — Subsequent production.

Where the certificate under S. 188 was not obtained at the date of the complaint.

Held, the defect would be cured if the certificate has been obtained subsequently. (Shah and Kajiji, JJ.) Rambharthi Hirabharthi, In re.

AIR 1924 Bom 51 : 47 Bom 907 : 25 Bom LR 772 : 77 IC 189 : 25 Cr LJ 333.

——Certificate obtained after inquiry has begun.

The proviso requires that an offence committed within the limits of native state should not be inquired into without a certificate from the Political agent. But the proviso does not make illegal the obtaining of the certificate after the filing of the complaint or even after the enquiry had begun and completed to the extent of the magistrate taking some evidence for the complainant. (Chandavarkar and Heaton, JJ.) Emperor v. Sakharam Pandu.

12 Bom LR 667 : 7 Ind Cas 934 : 11 Cr LJ 543.

——Dacoity committed in British India —Property found in possession of native Indian subject in a native state—Trial of such person in British India without certificate from political agent.

See ibid, S. 180.

11 Cr LJ 306 (Mad).

——Ss. 188 and 537—Certificate of political Agent received after recording of evidence but before committal—The certificate required of the Political Agent by S. 188 was not received until the committing Magistrate had recorded some of the evidence for the prosecution although it was received before the committal was made:

Held, that the word "charge" as used in S. 188 was used in the sense in which it was used elsewhere in the Code. Assuming that it would be more regular for the committing Magistrate to have re-called the witnesses whom he had examined before the certificate was issued, nevertheless it had not been shown that the accused had in any way been injured or prejudiced. (Batty and Aston, JJ.) Emperor v. Mahamad Buksh Karim Buksh.

8 Bom LR 507 : 4 Cr LJ 49.

6. Certificate necessary for inquiry and trial.

——Ss. 188 and 197 — 'Enquiring into a charge' and 'taking cognizance of an offence', meaning of, explained — Proper procedure pointed out.

CRIMINAL P. C. (V of 1898), S. 188—6. Certificate necessary for inquiry and trial

R a subject of His Highness residing at Fatehpur is alleged to have committed an offence under S. 420, J. P. C., beyond the limits of Jaipur State at Indore. Offence can be tried by the Magistrate at Fatehpur provided sanction of the Government has been obtained. The Fatehpur Magistrate was quite competent to take cognizance of the offence without such sanction as S. 188, J. Cr. P. C. prohibits enquiry into a charge without sanction of the Government and not taking cognizance of the offence. AIR 1925 Sind 88 and AIR 1924 Bom 51, Foll. Mitra's Cr. P. C. 9th Edition para 585, page 492, Ref.

Held, that the Magistrate had made a mistake in returning the complaint when presented to him and that the proper procedure for him was to take cognizance of the offence but he should have waited for a reasonable time for a certificate under S. 188 or should have given time to the complainant for producing such a certificate. In case no such certificate was received within a reasonable time complaint should then be rejected. (Mirza and Sharma JJ.) Ram Kunwar v. Kashi Prasad.

1946 JLR 482.

——Where the Political Agent has certified that in his opinion the charge ought to be enquired into in British India prior to the commencement of the committal proceedings, the commitment is perfectly valid. (Campbell, J.) Ruliya Singh v. Emperor.

AIR 1926 Lah 609 : 7 Lah 468 : 27 PLR 708 : 96 IC 398 : 27 Cr LJ 942.

7. "Notwithstanding anything".

——Offence under S. 420, Penal Code — Accused printing lottery tickets at place in British India and despatching them from that place — A purchasing them in Travancore — B in Travancore purchasing from A— Lottery not held — Deception of B and parting of money by B held took place at Travancore — C in Trichur (place in Travancore) ordering tickets by V.P.P. —Payment made at Post Office in Trichur — Post Office held acted as agent for accused — Deception held took place at Trichur — Assuming post office acted as agent of C in transmitting money to accused, consequence of deception took place in British India and S. 188 applied: See ibid, Ss 177, 179, 188.

AIR 1949 Mad 3 : 50 Cr LJ 70.

——S. 188, First Proviso — Offence under S. 409, Penal Code.

The proviso is not controlled by any of the preceding sections of the Chapter. The accused who was running a bank in British India, received gold ornaments by way of pledge and sub-pledged them for higher amounts to a bank in a Native State. Held, that the British Indian Court had no jurisdiction to try the accused for an offence under S. 409, Penal Code, without the certificate from the authority prescribed in the first proviso to S. 188 and the fact that the ornaments had been

CRIMINAL P. C. (V of 1898), S. 188 — 7. "Notwithstanding anything"

received within its jurisdiction was of no avail notwithstanding the provisions of S. 181 (2): AIR 1935 Mad 189 and AIR 1935 Mad 326, Rel. on. (Yahya Ali, J.) In re M. L. Verghese.

AIR 1947 Mad 352 : 1947-1 MLJ 277 : 60 MLW 233 : 1947 MWN 213 : 1947 AWR Sup 87 : 1947 OA Sup 87.

——Under the terms of S. 188, as it stands since the amendment of 1923, a Court in British India cannot try an offence by virtue of the terms of S. 179, Criminal P. C. merely because part of the consequences has ensued within its jurisdiction if some part of the offence has been committed in a Native State without the certificate of the Political Agent. (Curgenven and King JJ.) Fakurulla Khan In re.

AIR 1935 Mad 326 : 41 MLW 352 : 1935 MWN 325 (2) : 68 MLJ 415 : 8 RM 598 : 159 IC 1048 : 37 Cr LJ 195.

——Applicability.

Offence under S. 29, I. P. C. — Act committed in French territory — Annoyance to person in British India — British Indian Courts have no jurisdiction to try it — Section 179 does not apply — Even if it applies, there must be certificate or sanction under S. 188. (Pandrang Row J.) Sreeramamurthy v. Emperor.

AIR 1935 Mad 189 : 1934 MWN 1316 : 41 MLW 82 : 7 RM 416 : 68 MLJ 211 : 154 IC 146 : 36 Cr LJ 467.

——Since the amendment of Criminal P. C., S. 188 overrides S. 179, in any case in which S. 188 is applicable. (Rankin C. J. and C. C. Ghose, J.) Superintendent and Remembrancer of Legal Affairs, Bengal v. Ludur Chandra Das.

AIR 1932 Cal 465 : Ind Rul (1932) Cal 185 : 59 Cal 1065 : 36 CWN 456 : 136 IC 137 : 33 Cr LJ 267.

——Dacoity committed in British India — Stolen property found in Native State — Native Indian British subject—Trial in a British Court—Certificate of Political Agent, necessity for.

See Criminal Procedure Code (Act V of 1898), S. 180.

11 Cr LJ 306 (Mad).

8. Necessity of express certificate.

——It is unreasonable to assume on the strength of a certificate signed by the Under-Secretary to the Political Agent that the Political Agent has himself certified that the charge ought to be enquired into in British India. (Campbell, J.) Ruliya Singh v. Emperor.

AIR 1926 Lah 609 : 7 Lah 468 : 27 PLR 708 : 96 IC 398 : 27 Cr LJ 942.

9. Form of certificate.

——Certificate of Political Agent or sanction of Provincial Government—Form and contents.

See Prevention of Corruption Act (1947), S. 6.

AIR 1949 Mad 710 : 51 Cr LJ 156.

CRIMINAL P. C. (V of 1898), S. 188 — 9. Form of certificate

——Certificate not signed by Political Agent—Another officer signing with authority of Political Agent —Sufficiency of.

Where a certificate purporting to be under S. 188, Criminal P. C., did not say that the Political Agent certified anything, but that the Officer who signed it certified what was necessary and that he did so for the Political Agent:

Held that as the document is merely required as evidence of the fact that the Political Agent has certified as required by the section, there is no objection to the document being signed by some officer other than the Political Agent, provided it is done under the orders or with the authority of the latter, and where the Political Agent has not only authorized but has himself suggested that this was a fit case to be inquired into in British India, and that it ought to be inquired into there, the certificate is in order.

Per Divatia, J.—All that the proviso to S. 188 requires is that it should be made known that the Political Agent is of opinion that the case should be tried in British India. No particular form of certificate being, therefore, required, one has to see in each case whether the Political Agent has expressed his opinion that the case should be tried in British India. It is not necessary that that opinion, if it is in a written form, should be signed by the Political Agent himself. It would be sufficient if that opinion is communicated by some one who is duly authorised by the Political Agent to do so. (Broomfield and Divatia, JJ.) Bhaiji Manor v. Emperor.

AIR 1934 Bom 41 : 58 Bom 97 : 6 RB 283 : 35 Bom LR 1177 : 148 IC 268 : 35 Cr LJ 629.

——The section does not mention the word "certificate" at all and there is no direction for the signing of a certificate by any particular person. Nor is the manner prescribed in which it is to be proved that the Political Agent has certified that the charge ought to be enquired into in British India although obviously the most convenient method of proving this is the production of a document signed by the Political Agent. (Campbell, J.) Ruliya Singh v. Emperor.

AIR 1926 Lah 609 : 7 Lah 468 : 27 PLR 708 : 96 IC 398 : 27 Cr LJ 942.

——Requirement.

S. 188 casts upon the Government of Mysore the duty of making a reference to the British Resident with a view to ascertaining the intentions of the British Government. The proof that is required by the Magistrate acting under S. 188 is of the fact that such a reference has been made by the Mysore Government and that that Government has satisfied itself that the British Government does not propose to demand the surrender of the accused person. These are requirements to be fulfilled by the Mysore Government and it is for that Government therefore to certify that they have been fulfilled. A statement to this

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effect under the signature of a Secretary to Government is quite sufficient to indicate this; and the production of the written communication of the British Government to the Resident or of the Resident to the Darbar is not necessary for the purpose of S. 188. (Mr. Justice K. S. Chandrasekhara Aiyar Offg. Chief Judge) In the matter of Sama alias Pujari.

12 MCCR 241 : 9 Cr LJ 435 (Mysore).

10. Contents of certificate.

——Certificate by a Resident to try a suit.

A certificate granted under S. 188, Cr. P. C., by a Resident in respect of a certain set of facts covers every charge which the facts disclosed in the proceedings suffice to sustain.

So the mere circumstance that a particular section was entered in the certificate does not necessarily lead to the conclusion that the certificate was granted for the purpose of trial only on that charge and not in respect to an other offence disclosed by the facts proved. (Tudball, J.) Krishnanath v. Emperor.

8 ALJ 525 : 33 A 514 : 10 IC 959 (2) : 12 Cr LJ 359.

——Certificate by Political Agent—Order of commitment, whether good when certificate mentions no charge.

Where the certificate did not grant sanction for prosecution of the accused under any specified sections of the Penal Code but only stated that the accused should be tried in British India for the offence committed by him the commitment of the accused is good even though it is an order for commitment on a charge which is not specified in the certificate. (Arnold White, C. J. and Subramania Aiyar J.) In re Sessions Judge of South Arcot.

8 MLT 203 : 7 Ind Cas 802 : 11 Cr LJ 531.

11. Political Agent—Who is.

——British Vice-Consul in foreign territory, if a Political Agent.

A British Vice-Consul appointed by the British Govt. in any part of a foreign territory or colony under the suzerainty of a foreign independent State is not an officer appointed by the British Indian Govt. and does not come within the meaning of a Political Agent as used in S. 188, Criminal P. C. (Rupchand J. C. and Mehta, A. J. C.) Jeramdas Vishendas v. Emperor.

AIR 1934 Sind 96 : 28 SLR 27 : 7 RS 117 : 153 IC 60 : 36 Cr LJ 240.

12. Offences committed on the high seas.

——S. 188, if applies to cases tried by Court in Admiralty Jurisdiction.

Section 188, Criminal P. C., does not apply to cases tried by a Court in its Admiralty Jurisdiction. There is nothing in S. 188 to warrant the suggestion that S. 188 was intended to control trials held under the Admiralty Jurisdiction of

CRIMINAL P. C. (V of 1898), S. 188 — 12. Offences committed on the high seas

the Court vested in it by a Parliamentary Statute or Statutes or that it was intended to apply to an offence committed, not in the territory of a foreign State but on a merchant ship entering its territorial waters and over which the State exercises only a quasi-territorial jurisdiction. (Davis J. C. and Rupchand, A. J. C.) Francis Xavier Fernandes v. Emperor.

AIR 1936 Sind 3 : 29 SLR 281 : 8 RS 122 : 160 IC 375 : 37 Cr LJ 314.

——Offence committed on high seas—Sanction—Political Agent.

The first proviso to S. 188 refers only to offences committed on any territory and not to offences committed on high seas. The words "where there is no Political Agent" in the first proviso to the section mean when there is no Political Agent for the territory in which the offence is alleged to have been committed. The word "place" in the first paragraph of the section includes high seas in its ambit. (Batchelor and Shah, JJ.) Manuel Phillip v. Emperor.

AIR 1917 Bom 280 : 41 Bom 667 : 41 IC 158 : 19 Bom LR 537 : 18 Cr LJ 782.

——Territory — Does not include high seas.

The word 'territory' in S. 188 proviso (1) refers only to territories of any Native Prince or Chief in India, but it cannot include the high seas as they are not part of the territories of any state. (Fox, C. J., Hartnol and Twomey, JJ.) Po Thaung v. Emperor.

5 LBR 221 : 4 Bur LT 58 : 10 IC 705 : 12 Cr LJ 198.

13. Offences under Child Marriage Restraint Act, 1929.

——Offence under Child Marriage Restraint Act committed in French territory cannot be inquired into in British India without certificate of Political Agent or sanction of Local Government.

In the absence of the certificate of the Political Agent or sanction of the Local Government, a charge of an offence under Child Marriage Restraint Act committed in French territory cannot be inquired into in British India as there is nothing to the contrary in the Child Marriage Restraint Act. (Lakshmana Rao, J.) Subba Rao v. Kamaraju.

AIR 1939 Mad 577 : 1939 MWN 742 : 12 RM 368 : 49 LW 656 : 183 IC 708 : 40 Cr LJ 822 (1).

——Applicability—Child marriage contracted outside British India.

A child marriage contracted outside British India is not an offence under the Child Marriage Restraint Act and, therefore, there is no offence to which S. 188, Criminal P. C. can apply. (Beaumont, C. J. and N. J. Wadia, J.) Narayan Mudlagiri Mahale v. Emperor.

AIR 1935 Bom 437 : 37 Bom LR 885 : 8 RB 239 : 59 Bom 745 : 159 IC 923 : 37 Cr LJ 211.

CRIMINAL P. C. (V of 1898) ——S. 189.

——S. 189 (2)—Judge and jury —Matter must be left to jury if there is any evidence.

Where there is some evidence in the case, it is for the jury to say whether or how far the evidence is to be believed and it is not correct to say that the matter could be left to the jury only if the evidence relating to it is satisfactory, trustworthy and conclusive.

It is only in those cases which fall under S. 189, sub-s. (2), Criminal P. C., that the Judge can direct the jury to return a verdict of not guilty. (Fazl Ali and Scroope, JJ.) Rup Narain Kurmi v. Emperor. — —

AIR 1931 Pat 172 : 10 Pat 140 : Ind Rul (1931) Pat 300 : 12 PLT 746 : 132 IC 876 : 32 Cr LJ 975.

——S. 190.

See also (i) Criminal P. C. (1898), Ss. 195 and 476 and (ii) Penal Code (1860), S. 182.

SYNOPSIS

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      (i) Information received in another capacity.
   (d) "Upon his own knowledge or suspicion".
10. **Who can take cognizance.**

1. Applicability.

——S. 190 (1) — Trial under W. B. Special Courts Ordinance—Cognizance of offence under S. 190(1).

CRIMINAL P. C. (V of 1898), S. 190—1. Applicability

See West Bengal Special Courts Ordinance (3 of 1949).

54 CWN 753.

——S. 190 comes under the heading "conditions requisite for initiation of proceedings". (Lort-Williams and Jack, JJ.) Bhupati Bhusan v. Amio Bhusan.

AIR 1935 Cal 491 : 8 RC 122 : 39 CWN 919 : 62 CLJ 240 : 62 C 1119 : 157 IC 670 : 36 Cr LJ 1238.

——The provisions of S. 190 do not apply to proceedings taken under S. 110 by a Magistrate upon information received from any person other than a police officer. 27 All. 172, Foll. (Kincaid, J. C.) Mahomedally v. Emperor.

AIR 1927 Sind 77 : 20 SLR 291 : 98 IC 128 : 27 Cr LJ 1230.

——Illegal possession of arms — Institution of proceedings.

See Arms Act Ss. 19 (e) (f), 29.

8 Cr LJ 65 (Low Bur.).

——Ss. 190, 195, Applicability — S. 190 applies to offences mentioned in S. 195 as well as to others. A Magistrate can take cognizance of an offence mentioned in S. 195 only in one of the three ways specified in S. 190. (G. W. Shaw, J.) NGA Paw U v. King-Emperor.

UBR 807 Crim Pro Code 1 : 6 Cr LJ 25.

2. Clauses of section, if mutually exclusive.

——Ss. 190 (1) and 239 — Clauses in S. 190 (1) are not mutually exclusive — Police report and complaint about same offence — Cognizance by Magistrate — Joint trial of accused named in police report and in complaint — Legality: AIR 1951 Raj. 13, Overruled.

Under S. 190 (1), it is open to a Magistrate to act on any one of the three grounds mentioned in the Clauses in S. 190 (1) but these three grounds are not mutually exclusive and it is possible for a Magistrate to take cognizance of any offence upon two or more of such grounds e.g., both upon receiving a complaint and on a police report.

If there are no circumstances which make a joint trial in particular cases improper, a Magistrate has the jurisdiction to amalgamate the two cases and hold a joint trial of the accused mentioned in the police report and in the complaint provided he can do so under S. 239, and his action in doing so is not illegal. AIR 1951 Raj 16, Overruled. (Wanchoo, C. J. and Bapna J.) Mukania v. Achalia.

AIR 1952 Raj 160 : 1952 Raj LW 225 : ILR (1952) 2 Raj 153 : 1952 Cr LJ 1599.

——A Magistrate can take cognizance of a case either under S. 190 (1)(a), (b), or (c), Criminal P. C., or under all three of them if he is invested with powers thereunder. (Ba U, J.) U Po Yone v. Emperor.

AIR 1933 Rang 271 : 146 IC 196 : 6 R Rang 78: 34 Cr LJ 1185.

CRIMINAL P. C. (V of 1898), S. 190 — 2. Clauses of section, if mutually exclusive

——Cls: a, b, c, not mutually exclusive.

While considering S. 190 it cannot be treated that three alternatives upon which a magistrate may take proceedings are mutually exclusive. It is not correct that a magistrate while taking cognizance of an offence should have done it under some one of the alternatives to the exclusion of the other. (Courtney Terrell, C. J., Dhavle and James, JJ.) Bharat Kishore Lal Singh Deo v. Judhistir Modak.

AIR 1929 Pat 473 : 10 PLT 779 : 119 IC 413 : 1929 Cr C 341 : 30 Cr LJ 1056.

3. Distinction between S. 190(1) and S. 192(1).

——Ss. 190 (1), 192 (1) — Distinction between.

In S. 190 (1), Criminal P. C., the reference is to a Magistrate taking cognizance of any offence, whereas S. 192 (1) authorizes certain superior Magistrates to transfer any case of which they have taken cognizance. The expression 'case of which he has taken cognizance' in S. 192 (1), means nothing more than the judicial investigation into any offence of which he has taken cognizance. (Macpherson and Agarwala, JJ.) Deonarain Singh v. Emperor.

AIR 1933 Pat 244 : 14 PLT 176 : 12 Pat 341 : 6 RP 384 : 147 IC 913 : 35 Cr LJ 533.

4. "May take cognizance."

——Ss. 190, 203, 436, 439, 561A — Previous complaint dismissed — Complainant filing second complaint — Magistrate not to dismiss second complaint solely on ground that previous complaint on same allegations had been dismissed — Fact that remedy under S. 436 is open to complainant is no bar—Complainant defaulting only once—High Court not to exercise its inherent powers to quash proceedings—No process issued to accused — Accused has no locus standi to appear before High Court to pray for quashing of proceedings.

There is no legal bar to a Magistrate's taking cognizance of offence on a second or fresh complaint whether the previous complaint was dismissed on merits or otherwise, and by him or by any other Magistrate. If the second complaint discloses an offence and he has jurisdiction to take cognizance of it, he is bound to take cognizance of it. Though S. 190 is worded as if it were permissive, it does not appear that the intention of the Legislature was to give discretion to Magistrates in the matter of taking cognizance of an offence, on a complaint. Once he takes cognizance of the offence, he is bound to proceed with the complaint according to the Criminal P. C., and has no power to dismiss it solely on the ground that a previous complaint on the same allegations had been dismissed. The inherent powers exist only in the High Court and they will be exercised only to prevent abuse of the processes of Court. It is open to a person whose complaint has been dismissed under S. 203

CRIMINAL P. C. (V of 1898), S. 190 — 4. "May take cognizance"

to have the order of dismissal set aside on revision under S. 436. But the fact that this remedy is open to him does not lead to the conclusion that it is the only remedy and that he cannot file a fresh complaint on the same allegations. The Magistrate entertaining the second complaint, before deciding whether to issue a process against the accused, must consider the ground on which the previous complaint had been dismissed. Where the complainant has defaulted only once there is no question of High Court exercising inherent powers to quash the proceedings pending against the applicant. In certain cases a High Court will exercise its revisional powers at the instance of a third person, but where no process has been issued against the accused he cannot be said to have been aggrieved by the entertainment of the second complaint. He has no locus standi to appear before the High Court with the prayer to quash the proceedings. (Desai, J.) Chitto Adhikari v. Vidhya Bhushan Sharma.

AIR 1952 All 455 : ILR (1950) All 1284 : 1950 ALJ 2 : 1950 All WR (Hc) 81 : 1950 All Cri Cas 37 : 1952 Cr LJ 827.

——Ss. 190 (1) (a), 156 (3) and 200 — Petition of complaint filed before Magistrate — Magistrate if bound to take cognizance.

When a petition of complaint is filed before a Magistrate the Magistrate may take cognizance under S. 190 (1) (a) and proceed to examine the complainant under S. 200, and thereafter proceed according to the subsequent sections of the Code, or in the alternative, may not take cognizance and may instead send it to the police for investigation under the provisions of S. 156 (3). (Das Gupta and Lahiri, JJ.) Supdt. and Remembrancer of Legal Affairs, West Bengal v. Abani Kumar.

AIR 1950 Cal 437 : ILR (1951) 2 Cal 29 : 52 Cr LJ 806.

——S. 190 (1) (a) — Option of Magistrate to take cognizance.

Where there is no legal bar to the entertainment of a complaint the Magistrate is bound to take cognizance and he cannot refer the matter to the police directing the police to take cognizance and investigate. (Sen, J.) Yakub Sheikh v. The King.

AIR 1950 Cal 340 : 54 CWN 373 : 51 Cr LJ 1290.

——S. 190(1) — "May" — Meaning of.

The word 'may' in S. 190 (1) means must. The word 'may' is used because there are three separate sets of circumstances laid down upon which cognizance may be taken. (Sen, J.) Yakub Sheikh v. The King.

AIR 1950 Cal 340 : 54 CWN 373 : 51 Cr LJ 1290.

——Complaint to Magistrate — Magistrate not taking cognizance but forwarding complaint to police for investigation and taking cognizance — Validity.

CRIMINAL P. C. (V of 1898), S. 190— 4. "May take cognizance"

See ibid, S. 156 (3).

AIR 1950 Cal 246 : 51 Cr LJ 720.

——Taking cognizance twice of same offence.

A second cognizance can be taken afresh and proceeded with to trial after the abandonment of the first cognizance. (Ormond and Amiruddin Ahmad, JJ.) Kamaleshwar Banerjee v. Hamid Hasan Nomani.

54 CWN (2 DR) 71.

——"May take cognizance" — Obligation on Magistrate to take cognizance of offence disclosed by complaint — Magistrate if has any option.

See ibid, S. 200.

AIR 1949 Cal 197 : 50 Cr LJ 368.

——Illegal arrest, effect.

Even where the arrest of the accused under the Public Gambling Act was illegal, the Court still has jurisdiction under S. 190, Criminal P. C., to take cognizance of the offence and the question whether the arrest was valid or not would not affect the question whether the accused is guilty or not. (Pollock, J.) In re Nagarmal Ram Janki.

AIR 1941 Nag 338 : 1941 NLJ 465 : 14 RN 145 : ILR (1942) Nag 426 : 196 IC 869 : 43 Cr LJ 89.

——Previous judgment of Civil Court between same parties, whether debars Criminal Court from taking cognizance of case and holding trial.

Though a civil suit and criminal prosecution may be based on exactly the same cause of action, the parties are, strictly speaking, not the same. The burden of proof is differently placed and different considerations may come in. The result may, therefore, be a conflict in decision. The risk of such conflict is one that is inherent in the division of causes into criminal and civil. The judgment of neither Court is binding on the other and each must decide the cause on the evidence before it. The fact, therefore, that the matter in issue had already been decided in favour of the accused in a civil suit between the same parties does not debar the Criminal Court from taking cognizance of the case and holding a trial. (Mosely, J.) Maung Po Nwe v. Ma Pwa Chone.

AIR 1939 Rang 394 : 12 R Rang 176 : 1940 Rang LR 163 : 184 IC 842 : 41 Cr LJ 139.

——Ss. 190 (1), 202, 436 — Dismissal of complaint after hearing evidence — Order for further enquiry — Power to order trial without enquiry under S. 202 — Power to take cognizance under S. 190(1).

There is nothing to prevent a District Magistrate when moved to act under under S. 436 from taking cognizance, in his discretion, of the complaint under S. 190(1), Criminal P. C. (Macpherson, J.) Ramji Gujrati v. Emperor.

AIR 1931 Pat 50 : 12 PLT 729 : Ind Rul (1931) Pat 177 : 130 IC 529 : 32 Cr LJ 548.

CRIMINAL P. C. (V of 1898), S. 190— 4. "May take cognizance"

——S. 190 (1) (b) — Cognizance by Magistrate — Evidence on spot.

It is not the duty of a Magistrate to take cognizance of a case on the basis of what he found on the spot. (Woodroffe and Beachcroft, JJ.) Romeshchandra v. Emperor.

AIR 1914 Cal 456 : 41 Cal 350 : 18 CWN 493 : 23 IC 985 : 15 Cr LJ 385.

——Police report — Initiation of cases on — Magistrate's powers. — A Magistrate has power to refuse to initiate proceedings on the report of the police, where there is no complaint. And if the case is not a warrant case, an order of discharge cannot be made under S. 253. Even if such an order is made under that section, it should be taken as one made under S. 190, and the High Court will not interfere with such order. (Banerji, J) Bhiku Bari v. King-Emperor.

1 ALJ 609 : 1 Cr LJ 980.

5. Revision.

——Ss. 190 (1) (c), 436 — Order of District Magistrate taking cognizance — Nature of — Revision.

Where after completing investigation against the accused the police sent a final report to the S. D. Magistrate that no case was made out against him on which the Magistrate ordered the case to be struck off the file but as the accused was a Government servant he sent a report to the District Magistrate for his information, upon which the District Magistrate ordered the police to submit a challan against the accused:

Held, that (1) the order of the S. D. Magistrate being an executive one, it was capable of being revised by him or by any other executive authority competent to do so. The District Magistrate's order, therefore, was not ultra vires.

(2) And that the order of the District Magistrate by which he took cognizance of the case under S. 190 (1) (c) was a judicial one and was not an executive one, and as such it was revisable. 29 Cr. L. J. 942, held Overruled by 34 Cr. L. J. 1193. (Ranawat, J.) Ramsarup v. State.

AIR 1951 Raj 146 : 1951 Raj LW 83 : 52 Cr LJ 1174.

6. Taking Cognizance — Meaning of.

(a) Addition of accused.
(b) Cognizance is taken of offence, not of offenders.
(c) Cognizance of additional charge.
(d) Want of sanction.

6. Taking Cognizance — Meaning of.

——Ss. 190 (1) (a) and 200—Taking cognizance—Test — Examination of complainant under S. 200.

In order to take cognizance of an offence under S. 190 (1) (a) the Magistrate must have not only applied his mind to the contents of the petition, but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of Chapter XVI.

CRIMINAL P. C. (V of 1898), S. 190—6. Taking cognizance—Meaning of

Per Ram Labhaya J. :— Where a Magistrate examines a complainant under S. 200, there cannot be any doubt that he has taken cognizance of the case.

Per Deka J. — (Contra) — The cognizance cannot be said to be taken simply because a complainant is examined under S. 200. (Ram Labhaya and Deka, JJ.) Asha Das v. State.

AIR 1953 Assam 1 : ILR (1952) 4 Assam 458 : 1953 Cr LJ 168.

——"Taking cognizance of an offence" — Meaning of.

The expression "taking cognizance of an offence" has not been defined in the Code. In its broad and literal sense, it means "taking notice of an offence" and would include the intention of initiating judicial proceedings against the offender in respect of that offence or taking steps to see whether there is any basis for initiating judicial proceedings or for other purposes. (Monohar Pershad & Mohammed Ahmed Ansari, JJ.) Pannalal v. Hyderabad State.

AIR 1951 Hyd 13 : ILR (1951 1 Tyd 352 : 1952 Cr LJ 1376.

——S. 190 (1) (a) — Taking cognizance — Phrase explained.

Before it can be said that any Magistrate has taken cognizance of any offence under S. 190 (1), (a), he must not only have applied his mind to the contents of the petition, but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of the Chapter. When the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of the Chapter, but for taking action of some other kind, e.g., ordering investigation under S. 156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence. (Das Gupta and Lahiri JJ.) Supdt. and Remembrancer of Legal Affairs, West Bengal v. Abani Kumar.

AIR 1950 Cal 437 : ILR (1951) 2 Cal 29 : 52 Cr LJ 806.

——Ss. 190, 197 — Taking cognizance — What amounts to — Issue of warrant for arrest by Magistrate under S. 3, Prevention of Corruption Act — If amounts to taking cognizance — Prevention of Corruption Act (1947), Ss. 3, 6.

Before it can be said that any Magistrate has taken cognizance of any offence under S. 190 he must have applied his mind to the offence for the purpose of proceeding in a particular way as indicated in the subsequent provisions of Chapter proceeding under S. 200 and thereafter, sending it for inquiry and report under S. 202. When the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of the Chap, but for taking action of some other kind, e.g. ordering investigation under S. 156 (3), or

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issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence.

In the case of a cognizable offence, the Magistrate takes cognizance when the police have completed their investigation and come to the Magistrate for the issue of a process. In such a case before proceedings are initiated and while the matter is under investigation by the police the suspected person is liable to be arrested by the police without an order by the Magistrate.

For the Prevention of Corruption Act, offences under Ss. 161 and 165, Penal Code, become cognizable, notwithstanding what is provided in the Criminal P. C.

The proviso to S. 3 of the Act expressly covers the case of a Magistrate issuing a warrant for the arrest of a person in the course of investigation only and on the footing that it is a cognizable offence. The only effect of that proviso is that instead of the police officer arresting on his own motion he has got to obtain an order of the Magistrate for the arrest. It is wrong from this feature of S. 3 of the Act alone to contend that because the warrant is issued it must be after the Magistrate has taken cognizance of it and the Magistrate's action can be only under S. 190 of the Criminal P. C.

Reading Ss. 197 and 190 of the Criminal P. C. and S. 6 of the Act in the light of the wording of the proviso to S. 3, it is clear that the stage at which a warrant is asked for under the proviso to S. 3 of the Act is not on cognizance of the offence by the Magistrate as contemplated by the other three sections, (Kania C. J., Patanjali Sastri and S. R. Das, JJ.) Chari R. R. v. State of U.P.

AIR 1951 SC 207 : 1952 SCA 443 : 1951 MWN 378 : 1951 SCJ 302 : 1951 MWN Cr 106 : 1951 SCR 312 : 1951-1 MLJ 617 : 1951 ALJ (SC) 90 : 64 MLW 516 : 1951 All MWR (Sup) 62 : 52 Cr LJ 775 (SC).

——Cognizance of case — Ultimate result of trial if material.

It is not permissible to look at the ultimate result of the trial in order to examine whether the Magistrate has taken legal cognizance of the case. (Ramaswami, J.) Abdul Mian v. King.

AIR 1951 Pat 513 : 52 Cr LJ 710 (1).

——Taking cognizance — Meaning of.

The expression 'taking cognizance of an offence' means the Court deciding to proceed against the offender with a view to determine his guilt and in cognizable cases the stage is reached when the police submits the charge sheet. An order for investigation by a Magistrate, whether in a non-cognizable offence or a cognizable offence, or his order for arrest and jail custody of the accused or an order granting bail does not amount to tak-

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ing cognizance. (Raghubar Dayal, J.) State v. R. R. Chari.

AIR 1950 All 626.

——Ss. 190 and 528 — Prior cognizance necessary for transfer of case — Mere transfer does not constitute cognizance. (Bannerji, J. C.) Maghu v. Rattan Singh.

AIR 1950 Him Pra 42.

——Taking cognizance.

Taking cognizance does not involve any formal action or indeed action of any kind, but occurs as soon as a Magistrate as such applies his mind to the suspected commission of an offence: 37 Cal 412 and AIR 1941 Cal. 185, Foll. (Das, J.) Dalu Gour v. Moneswar Mahto.

AIR 1948 Pat 25 : 13 BR 360 : 229 IC 262 : 42 Cr LJ 347.

——There is a difference between taking cognizance of an offence and the prosecution of an offender. (Davis C. J. and Thadani, J.) Emperor v. Samuel N. Ghani.

229 IC 158 : 48 Cr LJ 268 (Sind).

——Judge fixing date for trial takes cognizance of the offence — Cognizance can be taken in same proceedings.

Taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate as such applies his mind to the suspected commission of an offence.

Taking cognizance under S. 190(1) is a very particular, technical matter confined to the initiation of proceedings.

Where the judge fixes a date for the trial of the accused it must be said that he has taken cognizance of the offence: 12 Pat 758, Rel. on.

It cannot be said that the trial Court must take cognizance not in the pending proceedings but in fresh proceedings. Cognizance can be taken in the same proceedings. (Thein Maung, J.) S. M. Bashir v. The King.

1946 Rang LR 306.

——Taking cognizance does not involve formal action.

Taking cognizance does not involve any formal action, or indeed action of any kind but occurs as soon as a Magistrate as such applies his mind to the suspected commission of an offence. The word 'cognizance' is used in the Code to indicate the point when a Magistrate or a Judge first takes judicial notice of an offence. It is a different thing from the initiation of proceedings, rather it is the condition precedent to the initiation of proceedings by the Magistrate. Cognizance is taken of cases, not of persons, and there is nothing in theory to prevent a Magistrate from taking cognizance of a case even where the offenders are unknown. The fact that the Magistrate has taken cognizance does not necessarily mean that there will be judicial proceedings against any one. Therefore, cognizance is something prior to and does not necessarily mean the

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commencement of judicial proceedings against any one. (Fazl Ali C. J., Manohar Lall and Meredith, JJ.) Gopal Marwari v. Emperor.

AIR 1943 Pat 245 : 22 Pat 433 : 10 BR 193 : 16 RP 114 : 209 IC 482 : 45 Cr LJ 177 (SB).

——Ss. 190, 254 — "Taking cognizance," meaning of.

The expression "taking cognizance of an offence" in S. 190, Criminal P. C., deals with a matter of a purely technical nature. Cognizance is usually taken upon complaint when process is issued, but no restricted interpretation can be given to that expression in the consideration of the character of the action of a Magistrate at any particular stage of the proceeding before him. But the terms of S. 190 make it clear that cognizance is taken upon issue of process before evidence is recorded. It is the complaint, therefore, which gives jurisdiction to the Magistrate to try the offence. (Broomfield and Wassoodew, JJ.) Baburao Tatyarao v. Emperor.

AIR 1936 Bom 379 : 38 Bom LR 946 : 9 RB 171 : 165 IC 867 : 38 Cr LJ 9.

——Deprivation of jurisdiction to proceed.

Where a Magistrate has properly taken cognizance of a complaint nothing that can happen subsequently will suffice nor can anything in S. 195 (1) (b), operate to deprive him of jurisdiction to proceed thereon in accordance with law. AIR 1925 Pat. 717, Dist. (Macpherson, J.) Parmanand Brahmachari v. Emperor.

AIR 1930 Pat 30 : 116 IC 46 : 1930 Cr C 6 : 10 PLT 618 : 12 AI Cr R 427 : 30 Cr LJ 554.

——Taking cognizance occurs as soon as the Magistrate as much applies his mind to the suspected commission of an offence. 37 Cal. 412, Foll. (Macpherson, J.) Parmanand Brahmachari v. Emperor.

AIR 1930 Pat 30 : 116 IC 46 : 10 PLT 618 : 12 AI Cr R 427 : 1930 Cr C 6 : 30 Cr LJ 554.

——A District Magistrate sent a matter to Sub-Divisional Magistrate for enquiry and report, and, after the report was made, ordered him to try the case himself. No opportunity was given to the accused to be tried by a different Magistrate and he was convicted.

Held, that it was the Magistrate who took cognizance of the case and the proceedings should be quashed as the case should have been tried in another Court. (Pullan, J.) Lachmi Narain v. Emperor.

AIR 1929 Oudh 87 : 113 IC 326 : 5 OWN 1136 : 4 Luck 353 : 12 AI Cr R 93 : 30 Cr LJ 134.

——Point of time.

Under S 190 a Magistrate takes cognizance of a case when the complaint is filed and even before the examination of the accused under S. 200. (6 Pat LJ 116; 11 Mad 443, Foll.) (Odgers and

CRIMINAL P. C. (V of 1898), S. 190—6. Taking cognizance—Meaning of

Wallace, JJ.) Ambayara Goundan v. Pachamuthu Goundan.

AIR 1924 Mad 587 : 81 IC 218 : 19 MLW 461 : 25 Cr LJ 730.

——Ss. 190 (1) (a), 200 and 537 — Cognizance of case — Omission to examine complainant.

S. 190 of the Cr. P. Code must be read with S. 200 of the Code. The cognizance of an offence by a Magistrate on complaint is not complete until he has examined the complainant on oath. (Das, J.) Mangu Koeri v. Emperor.

AIR 1920 Pat 670 : 51 IC 465 : 20 Cr LJ 481.

——Taking cognizance, meaning of.

Taking cognizance takes place as soon as the Magistrate applies his mind to the suspected commission of offence. It does not involve any formal action or action of any kind. (Stephen and Carnduff, JJ.) Sourindra Mohan Chuckerbutty v. Emperor.

14 CWN 512 : 37 Cal 412 : 6 IC 8 : 11 Cr LJ 217.

6. Taking cognizance — Meaning of —

(a) Addition of accused.

——Magistrate taking cognizance against 'A' — In course of trial, Magistrate is of opinion that 'B' is also concerned — Action against 'B.'

'Per Thadani C. J.'— Where a Magistrate takes cognizance of an offence against 'A' on a police report under S. 190 (i) (b) and in the course of the trial of 'A' the Magistrate is of the opinion that 'B' is also concerned in the offence, the Magistrate can either issue process himself against 'B' under S. 204, Criminal P. C., or direct the Police to arrest him and produce him in Court, and, on being so produced, the Magistrate can proceed to try both 'A' and 'B' at the same trial, and the question of S. 191 does not arise. If 'B' is present in Court the Magistrate can act under S. 351, and proceed to try him along with A and the question of S. 191 does not arise. If a Magistrate disposes of the case against A and then direct the Police that B also should be sent up by a separate challan and on that being done, the Magistrate tries B, it is possible to take the view that in such a case the direction of the Magistrate could be regarded as a complaint by a Magistrate, and as no Magistrate is entitled to be a Judge in his own complaint he is debarred from trying the case. (Deka, J. on Difference between Thadani C. J. and Ram Labhaya, J.) Kachu Gogoi v. State.

AIR 1951 Assam 151 : ILR (1951) 3 Assam 439 : 52 Cr LJ 1457.

——S. 190 (1) (c) — Transferee Magistrate can put on trial other persons not named in complaint.

A transferee Magistrate to whom the case, taken cognizance of, on complaint, has been transferred, can in course of trial not only add to the charge other offences not complained against but arising out of the same transaction and disclosed in the evidence, but also can put on trial other

CRIMINAL P. C. (V of 1898), S. 190—6. Taking cognizance—Meaning of—(a) Addition of accused persons whose names do not appear as accused in the petition of complaint directly or indirectly: 1 CWN 105, Foll; Case law reviewed. (Shearer and Ray, JJ.) N. Baksi v. M. Yunus.

AIR 1949 Pat 47 : 26 Pat 479 : 49 Cr LJ 612.

——S. 190 (1) (c) — Complaint to District Magistrate — Process issued — Case transferred to another Magistrate — Another complaint against another person for same offence to District Magistrate — District Magistrate held had jurisdiction to entertain such complaint.

One B filed a complaint under S. 500, Penal Code, in the Court of District Magistrate against the printer, the publisher and the editor of a newspaper for publishing a defamatory letter and the Magistrate issued process against the accused. The case was subsequently transferred by the High Court on the application of the accused to a Munsif Magistrate. B then filed another complaint in the Court of the District Magistrate against the proprietor of the newspaper in connection with the publication of the same letter. The District Magistrate issued process against the proprietor. B moved the High Court for the transfer of this case also to the same Magistrate to whom the previous case was transferred. The accused objected on the ground that the District Magistrate after transfer of the first defamation case ceased to have any jurisdiction over the offence and his order issuing process against the accused on subsequent complaint was without jurisdiction and there was therefore no case which could be transferred:

Held, that the District Magistrate had jurisdiction to entertain the second complaint and to issue process against the accused and the proceeding before him was a proceeding in law for the purpose of exercising powers of transfer by the High Court to the Court of the Munsif Magistrate. Case law reviewed (Shearer and Ray, JJ.) N. Baksi v. M. Yunus.

AIR 1949 Pat 47 : 26 Pat 479 : 49 Cr LJ 612.

——Full report in writing by police of facts constituting contravention of order made under Defence of India Rules — Magistrate taking cognizance of case can proceed against persons not mentioned in report: See Defence of India Rules (1939), R. 130.

AIR 1947 Pat 284.

——Inquiry into one conspiracy disclosing another —Accused in latter, witness in former — Trial by former Court.

An inquiry into one conspiracy disclosed another conspiracy, some individual or individuals being common to both. One of the accused was never an accused in the previous case but was a prosecution witness and when he gave his evidence, there could not have been any misapprehension in his mind that he was giving evi-

CRIMINAL P. C. (V of 1898), S. 190—6. Taking cognizance—Meaning of—(a) Addition of accused

dence in a case in which he was made an accused and subsequently discharged:

Held, that he need not be tried by the same Court for conspiracy and there was no implied pardon in his favour. (Agarwala and Varma, JJ.) Chandra Shekhar Prasad v. Emperor.

AIR 1935 Pat 91 : 7 RP 464 : 1 BR 302 : 154 IC 387 : 36 Cr LJ 500.

——Ss. 190, 351—New accused added in case — Whether entitles him to be tried by another Court.

On the addition of a new accused in a case he is not entitled as of right to have the case tried by another Court under the provisions of S. 191, Criminal P. C. It is open to the Magistrate to act under S. 351. (Mosely, J.) Intaj Khan v. Emperor.

AIR 1934 Rang 193 : 7 R Rang 71 : 151 IC 406 : 35 Cr LJ 1312.

——After the enquiry had begun against four accused, Sub-Inspector sending a letter to Magistrate as supplemental charge sheet to add another accused and Magistrate adding him as fifth accused:

Held, that procedure was illegal and Magistrate should examine him separately. (Burn, J.) Reddivari Narasimha Reddi v. Emperor.

1933 MWN 916.

——Complaint against servant—Cognizance against master.

Where a complaint under S. 6, Prevention of Cruelty to Animals Act, is made against a bullock driver, it is open to the Court to take cognizance of the offence against the owner of the animal also under S. 190 (c). (Wort, J.) Bindeshwar Prasad v. Emperor.

AIR 1932 Pat 65 : 10 Pat 847 : 13 PLT 44 : Ind Rul (1932) Pat 59 : 136 IC 59 : 33 Cr LJ 232.

——One A was challaned by the police for murder. In the course of committal proceedings the Magistrate found that there were some witnesses who said that the murderer was not A but M. The Magistrate therefore proposed to suspend further proceedings against A and directed that proceedings on the charge of murder should be started against M with the intention of committing one or the other to the Sessions Court.

Held, that the procedure, though not illegal, was not suitable. The magistrate should either commit A to the Sessions Court or, if he is not satisfied that there are sufficient grounds for committing him to the Sessions Court, should discharge him, and that further proceedings should not be taken against M until A is either convicted, acquitted, or discharged. (Wild, J. C. and Aston, A. J. C.) Sher Mahomed v. Emperor.

AIR 1929 Sind 17 : 115 IC 335 : 12 AI Cr R 372 : 30 Cr LJ 459.

——Not affected by section.

When a Magistrate adds an accused person at any stage of the proceedings he is not acting

CRIMINAL P. C. (V of 1898), S. 190—6. Taking cognizance—Meaning of—(a) Addition of accused

under S. 190 at all. So where after the trial has commenced the Court puts a witness into the dock instead of the witness-box, the Court is not taking cognizance of the offence even so far as that person is concerned. Case-law discussed. (Simpson, A. J. C.) Sri Kishan v. Debi Dayal.

AIR 1925 Oudh 739 : 90 IC 915 : 2 OWN 823 : 26 Cr LJ 1619.

——Quite within the powers.

When a Magistrate takes cognizance of a complaint under S. 190, Cl. (b), and directs process to issue against other persons whose names transpired in the prosecution evidence during the trial, he is perfectly justified in doing so and he is deemed to have taken action against them under clause (a) and not under clause (c). (Kincaid, J. C.. Raymond and Aston, A. J. Cs.) Mehrar v. The Crown.

AIR 1924 Sind 71 : 83 IC 885 : 17 SLR 150 : 26 Cr LJ 181 (FB).

——Ss. 190 and 351—Subsequent addition of new accused does not require fresh proceedings in initiation.

The addition of a new accused does not necessitate fresh proceedings in initiation. The evidence, it is true must be recorded de novo, but that is merely in order that the witnesses, whose evidence has already been recorded may be used against the new accused. The Magistrate having taken cognizance of the offence, it is right and proper, that he should bring to justice all those persons whether originally mentioned or not who, the evidence shows, were guilty of that offence. In such cases the magistrate should be regarded as taking cognizance under the same clause of section 190 as he did against the original accused. Section 351 applies to such cases, and is intended to apply to them. There is also authority for the view that Section 351 is independent of the provisions of section 190.

Per Maung Kin, J.—As regards Section 190 (1) the information, or the knowledge, or suspicion referred to therein, has reference to the initiation of proceedings in regard to the offence alleged to have been committed, and not to a later stage of the case. (Robinson, C. J. Maung Kin and Mac Gregor, JJ.) Nga Chan Tha v. Emperor.

AIR 1923 Rang 31 : 1 Bur LJ 183 : 11 LBR 398 : 73 IC 55 : 24 Cr LJ 519 (FB).

——Ss. 190 (1) (a) and 476 —Persons other than those mentioned in order—Jurisdiction to proceed against.

A magistrate who has legally taken cognizance of an offence as against a particular person becomes seized of the whole matter, and has jurisdiction to hold judicial proceedings in regard to all other persons concerned in the offence. Where a definite person has been directed under S. 476 to be prosecuted for a definite offence the Magistrate is competent to issue summons against any others who may be implicated in the offence.

CRIMINAL P. C. (V of 1898), S. 190—6, Taking cognizance—Meaning of—(a) Addition of accused (Chaudhuri and Newbould, JJ.) Girdharee Lal v. Emperor.

AIR 1917 Cal 121 : 21 CWN 950 : 42 IC 133 : 18 Cr LJ 901.

——S. 190 (1) (c)—Names of certain persons not in original complaint added as co-accused upon instructions of District Magistrate after presentation of complaint—Cognizance of offence.

See Cr. P. C., S. 191.

9 Cr LJ 64 (Low Bur).

——Ss. 190 and 192—Taking cognizance—Transfer of case.

A complaint was filed against A, B, and certain other persons. The Magistrate examined the complainant and summoned A only of the accused persons and passed no orders with respect to others. The case was then transferred to another Magistrate who after taking evidence acquitted A and summoned B to take his trial under S. 447 Criminal P. C. Held that the first Magistrate took cognizance of the whole case. The fact that he did not summon B did not amount to dismissal of the case against B, nor could it annul the cognizance which he had already taken of the case as a whole. The case must be treated as having been transferred as a whole.

Held further that it was clear from the action taken by the Magistrate to whom the case had been transferred that he did not intend to terminate proceedings in his Court. (Mookerjee and Coxe, JJ.) In re Azim Sheikh.

7 Cal LJ 249 : 7 Cr LJ 318.

——Some of the accused sent up by police—Trial and conviction by Deputy Magistrate — Jurisdiction to order prosecution of remaining accused.

Where on a complaint of a cognizable offence, the police sent up some only of the accused persons, who were tried and convicted by a Deputy Magistrate and subsequently, on the note of the District Magistrate or Deputy Commissioner, while inspecting the police outpost, the remaining accused were sent up for trial and the case was made over to the same Deputy Magistrate.

Held, that nothing was made over to the Deputy Magistrate at first except the case of some of the accused, who had been previously tried and convicted.

That the proceedings taken against the remaining accused without any one formally taking cognizance of the case were irregularly instituted and should be set aside. (Pargiter and Woodroffe, JJ.) Jharu Jola v. Shukh Deo Singh.

3 CLJ 87 : 3 Cr LJ 209.

——Person examined as witness cannot be made accused in the same trial—A witness, after he has given evidence to a certain extent, cannot be tried as accused along with the other accused, though his name might have been mentioned in the original complaint by the Magistrate. Such a procedure is highly calculated to intimidate

CRIMINAL P. C. (V of 1898), S. 190—6. Taking cognizance—Meaning of—(a) Addition of accused other witnesses. (Russell and Chandavarkar, JJ.) Emperor v. Krishna Ravji Gaikar.

7 Bom LR 472 : 2 Cr LJ 448.

6. Taking cognizance — Meaning of—

(b) Cognizance is taken of offence, not of offenders.

——Magistrate can summon persons, whom he thinks should be prosecuted.

Ordinarily, when a Magistrate takes cognizance of a case as a whole, he has power to summon all persons against whom, he thinks, there appears any reason for their prosecution, even when the names of such persons are not mentioned in the complaint by the complainant. (Reuben, J.) Sudhir Ranjan v. N. K. Mazumdar.

AIR 1944 Pat 210 : 11 BR 136 : 216 IC 312 : 46 Cr LJ 168.

——Person, if can be added as accused.

The wording of S. 351, which is a disabling section materially differs from that of S. 190 which gives jurisdiction to Magistrate to take cognizance of offences. Section 190 does not mention the accused. Magistrate takes cognizance of offence and not of persons. He can add person or persons to those accused already mentioned in the complaint or Police report. (Davis, C. J. and Weston, J.) Mir Fateh Khan v. Emperor.

AIR 1942 Sind 161 : ILR (1942) Kar 323 : 15 RS 89 : 204 IC 31 : 44 Cr LJ 137.

——Magistrate, if can add co-accused even if there is complaint only against principal offender.

Even if there is complaint of the Court as regards the principal offender before the Magistrate, he can add the abettors of that offence as co-accused, because S. 190, Criminal P. C., refers in terms to "offences" and not "offender", and a Magistrate having taken cognizance of an offence can add co-accused. (Davis J. C. and Weston. J.) Assudomal Ramandas v. Jhamandas Hotchand.

AIR 1940 Sind 100 : 13 RS 73 : ILR (1940) Kar 435 : 190 IC 222 : 41 Cr LJ 861.

——S. 190 (1) (a)—For initiation of proceeding, it is not necessary that there should be a person named as offender.

It is not a condition requisite for the initiation of proceedings in a Criminal Court that there should necessarily be a person named as the offender. The Magistrates mentioned in S. 190, sub-s. (1), Criminal P. C., are empowered to take cognizance of an offence whether or not the complaint before them charges any particular individual or individuals with having committed the offence. (Lobo, J. C. and O'Sullivan, J.) Fateh Muhammad v. Emperor.

AIR 1940 Sind 97 : ILR (1940) Kar 287 : 13 RS 33 : 189 IC 586 : 41 Cr LJ 750.

——Complaint not mentioning name of one accused—Magistrate, if can try him of offence complained, along with other accused complained against.

CRIMINAL P. C. (V of 1898), S. 190—6. Taking cognizance — Meaning of — (b) Cognizance is taken of offence, not of offenders

Cognizance is taken of an offence and not of the individual offenders, and it would ordinarily follow that, once a complaint has been made according to the provisions of the Criminal P. C., cognizance can be taken in respect of the offenders named in the complaint and also others who may be shown to have taken part in the transaction, although no complaint has been specifically made against them. Consequently, the absence of the name of one of the accused in the operative part of the complaint will not be sufficient to take away the jurisdiction of the Magistrate to try him. (Grille, J.) Emperor v. Vithu.

AIR 1938 Nag 133 : 9 RN 297 : ILR (1937) Nag 492 : 169 IC 74 : 38 Cr LJ 717.

——Cognizance is taken of offence and not of individual offenders —Transfer of case— Sub-Divisional Magistrate transferring case to another Magistrate — Explanation as to intention of transferring Magistrate — (Held, on facts, that whole case was transferred.).

Under S. 190, Criminal P. C., cognizance is taken of the offence and not necessarily of the individual offenders whose names transpire in the course of the investigation.

A rule was issued in respect of five out of nineteen persons who were convicted under S. 147, Penal Code. The case was remanded to the District Magistrate calling for an explanation as to whether the Sub-Divisional Officer, who transferred the case to the Magistrate who tried and convicted the accused, intended to transfer the whole case or the case only of those persons against whom the Police recommended that the case should be started. The explanation stated that cognizance was taken only in respect of those persons sent up by the Police and that the intention of the Sub-Divisional Officer was that investigation should proceed only with regard to the persons sent up by the Police:

Held, (on facts) that the explanation of the Sub-Divisional Magistrate that "he took cognizance only in respect of the persons sent up by the Police", meant only that he took cognizance of the offence and his action in transferring the case without excluding any of the accused, showed that he transferred the whole case for disposal. (James and Varma, JJ.) Mathura Singh v. Emperor.

AIR 1934 Pat 467 : 15 PLT 438 : 1 BR 379 : 7 RP 536 : 155 IC 58 : 36 Cr LJ 641.

——Magistrate takes cognizance of offence, not of offender. (Simpson, A. J. C.) Sri Kishan v. Debi Dayal.

AIR 1925 Oudh 739 : 90 IC 915 : 2 OWN 823 : 26 Cr LJ 1619.

——Under S. 190, a Magistrate takes cognizance of an offence and not of the offender. (Kincaid,

CRIMINAL P. C. (V of 1898), S. 190—6. Taking cognizance — Meaning of — (b) Cognizance is taken of offence, not of offenders

J. C., Raymond and Aston, A. J. Cs.) Mehrat v. The Crown.

AIR 1924 Sind 71 : 83 IC 885 : 17 SLR 150 : 26 Cr LJ 181 (FB).

6. Taking cognizance — Meaning of—

(c) Cognizance of additional charge.

——Jurisdiction — Jurisdiction whether ousted by filing challan relating to several offences.

When once the Court takes cognizance of an offence, it gets jurisdiction and this jurisdiction is not ousted by filing of a document relating to several offences. It is a general principle that once a jurisdiction is vested it cannot be ousted unless by an express provision of law and in the absence of any such provision, it should be presumed that the Court has jurisdiction even in such cases. (Manohar Pershad & Mohammed Ahmed Ansari, JJ.) Pannalal v. Hyderabad State.

AIR 1951 Hyd 113 : ILR (1951) Hyd 352 : 52 Cr LJ 1376.

——S. 190 (1) —Magistrate taking cognizance of case—Transfer to another Magistrate — Latter framing charge in respect of offence not disclosed in complaint but coming within purview of S. 254 —Such act if amounts to taking cognizance.

See ibid, S. 254.

AIR 1950 Pat 500.

——When under the provisions of S. 254 of the Code the Magistrate thinks upon the evidence heard, that a charge different from the one indicated by the complaint should be framed, he does not take cognizance under S. 190 (1) (c), for the power to frame a charge in a warrant case is inherent in the jurisdiction assumed by the Magistrate upon the original complaint. (Broomfield and Wassoodew, JJ.) Baburao Tatyarao v. Emperor.

AIR 1936 Bom 379 : 38 Bom LR 946 : 9 RB 171 : 165 IC 867 : 38 Cr LJ 9.

——Ss. 190 (1), 191, 4— Magistrate taking cognizance of case—Trial, if limited to offence specified in complaint or Police report—Taking cognizance, significance of.

In the trial of a criminal case, once the parties are before the Court, the Magistrate will deal with the accused for any offence disclosed by the evidence. No separate complaint is needed and it is open to the Magistrate to try the accused for any offence disclosed by the evidence and he is not limited to the offence specified in the complaint or Police report.

The power of framing charges comes into operation well after the initial requisite of taking cognizance under S. 190 (1), and this power is not restricted to the offender or the specific sections, if any, mentioned by the prosecutor. A complaint, as defined in S. 4 (h) need not, in fact, specify any offender or even the section of the law which makes an act or omission punishable and cognizance is taken under S. 190 (1) (a)

CRIMINAL P. C. (V of 1898), S. 190—6. Taking cognizance of — Meaning of — (c) Cognizance of additional charge

upon receiving a complaint of an offence, while charges are framed on the evidence before the trial Court. The evidence may disclose offences other than those originally mentioned or implied, but it cannot be said that cognizance is taken of such new offences under Cl. (c), sub-s. (1), S. 190, for the double reason that the stage for the application of the sub-section itself is long past and the clause can have no application to the evidence produced in the case. Similar observations apply to cases in which cognizance has been initially taken under Cl. (b) upon a Police Officer's written report of facts constituting an offence.

When a Magistrate has taken cognizance of an offence upon a complaint or upon a Police report, any offence that may be disclosed by the evidence may be dealt with at the trial ; and S. 190 (1) (c) and S. 191 have no application in such circumstances. (Dhavle and Rowland, JJ.) Baldeo Prasad v. Emperor.

AIR 1933 Pat 297 : 14 PLT 330 : 6 RP 166 : 12 Pat 758 : 145 IC 382 : 34 Cr LJ 942.

——Proper.

Where the Magistrate, acting on the facts disclosed in the evidence for the prosecution, added a second charge in respect of an act alleged to have been done in pursuance of the conspiracy which was the only offence alleged in the complaint.

Held, that the Magistrate's action was not only justified under S. 235, Cr. P. Code, but such initiation taken by him was on the original complaint and not upon his own knowledge or suspicion, because when a Magistrate has taken cognizance of an offence upon complaint, it is competent for him to take cognizance of any offence that is disclosed by the evidence and therefore S. 191 does not apply. AIR 1922 Cal. 107, Foll. (Maung Ba and Doyle, JJ.) Abdul Rahman v. Emperor.

AIR 1926 Rang 53 : 94 IC 717 : 4 Bur LJ 213 : 27 Cr LJ 669.

6. Taking cognizance — Meaning of—

(d) Want of sanction.

——Ss. 190 (1), 195 (1) (a)—Offence under S. 188, Penal Code made cognizable—S. 195 (1) not affected — Trial on police report without Magistrate's complaint invalid.

Section 190 of the Code which lays down that a Magistrate can take cognizance of an offence on a complaint or a report of a police officer, or own information is subject to the provisions of S. 195 (1) (a) which lays down that he cannot take cognizance of an offence under S. 188, Penal Code, except on the complaint in writing of the public servant concerned. The fact that the offence of S. 188, Penal Code, is made cognizable by Government only means that the police could arrest a person alleged to be guilty of that offence without a warrant and make an investigation into the offence. It does not affect the provisions of S. 195 (1) (a), Criminal P. C., which remain intact:

CRIMINAL P. C. (V of 1898), S. 190—6. Taking cognizance — Meaning of — (d) Want of sanction

Held that the Court had no jurisdiction to try an offence under S. 188, Penal Code, merely on the report of the police when there was no complaint by the Magistrate whose order was disobeyed. (Desai, J.) Sumer Goshain v. State.

AIR 1952 All 560 : 1951 All WR (HC) 518 : 1951 All Cr R 133 : 1951 RD (HC) 291 : 1952 Cr LJ 1034.

——Want of sanction — Effect.

——Single act amounting to offences under two or more sections of Penal Code — Prosecution for one of such offences requiring sanction — Prosecution can be launched for that act against the alleged offender for any other offence which does not require sanction in the absence of sanction. (Chudgar and Shukla, JJ.) United State of Saurashtra v. Harshadrai Himat Lal Jani.

1 Sau LR 51.

7. Taking cognizance under Cl. (a).

(a) Complaint.

(b) Who can lodge complaint.

7. Taking cognizance under Cl. (a).

——Case admitted under certain section of Penal Code by trying Magistrate — Appellate Magistrate, whether can direct prosecution for graver offence.

A complaint was filed against the accused alleging that he entered the house of the complainant and stole some articles. The trying Magistrate admitted the case under S. 380, Penal Code. When the case was pending, the appellate Magistrate directed the case to be treated as a preliminary register case under S. 395, Penal Code.

Held (1) that the order of the trying Magistrate admitting the case under S. 380, Penal Code did not amount to dismissal of complaint under S. 395, Penal Code so as to justify the order passed by the appellate Magistrate; (2) that the prosecution for a more serious offence could not be ordered by an appellate Court without notice to the accused and without hearing him; (3) that the order directing prosecution for a graver offence would have to be passed by the trying Magistrate himself. The appellate Magistrate had no jurisdiction to pass such an order. (Kuppuswami Aiyar J.) In re K. C. Manikya Mudaliar.

AIR 1948 Mad 95 : 1947-2 MLJ 137 : 1947 MWN 492 : 49 Cr LJ 30.

——Ss. 190, 191 — Police report mentioning only fact of assault and not murder — Special Judge framing charges under S. 323, Penal Code, for causing hurt in addition to charge under S. 302 for alleged murder — Action amounts to taking cognizance of offence under S. 323, Penal Code, under S. 190 (1) (a) and not under S. 190 (1) (c)

CRIMINAL P. C. (V of 1898), S. 190—7. Taking cognizance under cl. (a)

—S. 191 has no application. (U San Maung, J.) Maung Nyein Maung v. The Union of Burma.

1948 Bur LR 179.

——Magistrate is not confined to sections mentioned in complaint — He can frame charge under other sections, if facts proved establish charge under those sections.

It is always open to a Court before which a complaint is lodged in which only one or two sections are named to frame a charge under a third or fourth section if in his opinion the facts proved establish a charge under different sections from those named in the original complaint. (Yorke, J.) Har Prasad v. Emperor.

AIR 1947 All 139 : 1947 ALJ 1 : 1947 AWRHC 18 : 1947 OAHCB 10 : 229 IC 161 : ILR (1947) All 297 : 48 Cr LJ 282.

——Ss. 190, 476, 79 — Person taking illegal proceedings under S. 476, filing complaint to Magistrate — Magistrate taking cognizance of case, held not affected by such person's having committed illegality.

A person put in an application for refund under S. 49, Stamp Act and subsequently swore an affidavit in support of the application. On finding that the application and affidavit were false, the Additional District Magistrate who was also the Collector took proceedings against the person under S. 476, Criminal P. C., and made a complaint of the offence (Ss. 193, 420/511, Penal Code), to the Magistrate signed as Collector and Additional District Magistrate. The Sessions Judge set aside the order on the ground that the Additional District Magistrate had no jurisdiction to act under S. 476:

Held, that it was only the order under S. 476 that was illegal as the alleged offences did not come within the scope of S. 195, Criminal P. C., at all, and the Magistrate's jurisdiction to take cognizance of an offence on a complaint was not affected by any illegalities which may have been previously committed by the Additional District Magistrate and therefore the complaint should not be quashed. (Blacker, J.) Emperor v. Nanak Chand.

AIR 1943 Lah 208 : 45 PLR 226 : 16 RL 40 : 207 IC 639 : 44 Cr LJ 666.

——Offence under Companies Act — Cognizance.

Taking cognizance of offence under the Companies Act is governed by S. 190, Criminal P. C. and one of the methods of taking cognizance of an offence is by receiving a complaint of the facts which constitute subject of an offence without any restriction with regard to the person who may lay a complaint. (Horwill J.) Muthu Veeran Chettiar v. Mottayan Chettiar.

AIR 1942 Mad 283 : 15 RM 470 : 1942 1 MLJ 230 : 1942 MWN 121 : 202 IC 28 : 43 Cr LJ 785.

——S. 190 (1) (a) — Complaint against Receiver in absence of leave from High Court — Magistrate's jurisdiction to take cognizance of — Leave asked for but no specific leave granted — Effect.

Section 190 (1)(a), Criminal P. C., is conclusive on the question of jurisdiction and save as provided in the Code itself (or in any other law such as is referred to in S. 1(2) of the Code), there is no warrant for denying or limiting the power to take cognizance of offences, upon complaint.

Consequently, it is within the jurisdiction of the Additional Chief Presidency Magistrate or the Third Presidency Magistrate to take cognizance of complaint against a Receiver even in the absence of leave from the High Court, since no such leave is required by any provision of the Code (or any other law). It would not, however, be proper for him to do so, if there was no specific leave from the High Court for the institution of a criminal case although leave had been specifically asked for. This may not be a bar to jurisdiction but it is certainly relevant on the question of the propriety or desirability of criminal proceedings. (Khundkar and Rau, JJ.) Jnanendra Nath Pramanik v. Nilmony Dey.

AIR 1939 Cal 701 : ILR (1939) 1 Cal 587 : 43 CWN 582 : 12 RC 249 : 184 IC 603 : 41 Cr LJ 52.

——Complainant may give information of commission of an offence which he has not witnessed —He must give reasonable grounds for action and issue of process. (Burn, J.) Setti Bala Govindappa v. Emperor.

1936 MWN 528.

——Ss. 190 (1) (a), 195 (1) (c) — Tampered sale deed produced in Magistrate's Court — Report to Registrar — Enquiry by Registrar — Complaint by Registrar against scribe, vendee, and attesting witness in respect of forgery.

In a theft case, a tampered sale-deed was produced. In the meantime it was reported to the District Registrar that the register containing a copy of the aforesaid sale-deed was tampered with by altering the figure regarding the number of trees sold under the deed. He, therefore, started an enquiry and came to the conclusion that the original sale-deed as well as the copy kept in the Registrar's office were so altered. Accordingly, he lodged a complaint in the Court of the Sub-Divisional Magistrate, against the scribe under S. 467, I. P. C., and against the vendee and the attesting witness under Ss. 467, 109, I. P. C. in respect of the forgery of the aforesaid sale-deed. A preliminary objection was raised by the accused that the Sub-Divisional Magistrate had no jurisdiction to take cognizance of the offence on the complaint of the District Registrar as he was not the Court before which the alleged forged document was produced within the meaning of S. 195 (1) (c), Criminal P. C.:

Held, that the complaint came within S. 190 (1) (a), Criminal P. C., and was tenable and

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S. 195 (1) (c), Criminal P. C. was no bar as none of the accused were parties to the proceedings in the criminal case:

Held, also that the vendee was also not a party to that proceeding as it was not started upon his complaint but upon report made by the Police. (Subhedar, A. J. C.) Emperor v. Krishnarao.

AIR 1935 Nag 190 : 18 NLJ 247 : 8 RN 100 : 31 NLR 377 : 158 IC 647 : 36 Cr LJ 1477.

——Sessions Judge ordering arrest and production of witness before him, for trial before City Magistrate — Magistrate committing him to Sessions — Same Judge convicting him — Magistrate, if justified in taking cognizance—Permission under S. 556 not taken — Defect, if fatal.

In the trial in the Sessions Court, a man was produced and examined as a witness for the prosecution. The Sessions Judge came to the conclusion that this witness ought to have been charged as a receiver of stolen property. He, consequently, recorded the following order "From the evidence recorded by me in the Sessions case, I find that there is sufficient material before me for trying the witness under S. 411, I. P. C. I, therefore order him to be arrested and produced before the City Magistrate, to be tried for the same offence." The City Magistrate took cognizance of this offence and committed the witness for trial in the Court of Session. This trial went on before the same Judge who had made the order for the arrest and for his production before the City Magistrate to be tried. The trial in the Sessions Court ended in a conviction:

Held, that the City Magistrate was justified by S. 190 (a), Criminal P. C. in taking cognizance of this offence.

Held, also, if at the initial stage when the Sessions Judge first took up the case himself, he had requested the permission of the High Court to try the case, the disqualification might perhaps have been removed, and that there was a technical defect more serious than could be overlooked. (Ferrers J. C. and O'Sullivan, A. J. C.) Rahimbux Karimbux v. Emperor.

AIR 1935 Sind 1 : 28 SLR 347 : 7 RS 196 : 155 IC 448 : 36 Cr LJ 824.

——Complaint bad.

It is wrong that any Court should accept a complaint which charges two people in the alternative and it is also wrong that an order sanctioning such a prosecution in the alternative should be passed. (Carr, J.) Narinjan Das v. Emperor.

AIR 1930 Rang 51 : 1930 Cr C 243 : 126 IC 535 : 31 Cr LJ 1065.

——Institution, what is.

Institution of a criminal proceeding is the laying of an information before the Magistrate and as soon as the Magistrate receives the complaint that is done. (Kinkhede, A. J. C.) Ramjiwan Marwadi v. Lahini.

AIR 1927 Nag 202 : 10 NLJ 21 : 104 IC 108 : 9 AI Cr R 2 : 28 Cr LJ 780.

——Ss. 190 (1) (a) and 192 (3) — Powers of District Magistrate — Cognizance of case — Transfer.

Where a trial Magistrate reports to the District Magistrate that an accused before him was a perjurer and altered a document filed in Court he can take cognizance of the offence under S. 190(a) and transfer it for trial under S. 192 (1) to another Magistrate. (Sulaiman, J.) Suraj Prasad v. Emperor.

AIR 1924 All 190 : 21 ALJ 825 : LR 4 A 248 (Cr) : 81 IC 595 : 25 Cr LJ 947.

——Ss. 190, 202, and 476 — Inquiry can be made only on complaint — Jurisdiction of Magistrate.

A Magistrate has no power to make a judicial or preliminary enquiry unless a complaint is lodged before him under S. 190 (1) (a). S. 202 under which alone an inquiry can be made, relates exclusively to complaints. No such inquiry can be made when cognizance is taken under Cls. (b) and (c) of S. 190. Where a report was made to the Police of an offence but it was found that the act complained of was a mere accident and the Magistrate thereupon called on the person to show cause why he should not be prosecuted under S. 211 of the Penal Code and eventually passed an order under S. 476 directing his prosecution, held that there was never a judicial proceeding before the Magistrate within S. 476 of the Code and that the order was bad. (Jwala Prasad, J.) Tiloki Mahton v. Emperor.

AIR 1921 Pat 302 : 2 Pat LT 220 : 64 IC 47 : 22 Cr LJ 735.

——Ss. 190 (1) (a) and 191 — Complaint by Municipal servant.

Prosecution by Municipality for offence under the Bengal Municipal Act on the complaint of one of its servants, is under S. 190 (1) (a) and not under S. 190 (1) (c), and therefore the procedure under S. 191 does not apply. (Jwala Prasad, J.) Baldeo Lall v. Emperor.

AIR 1916 Pat 3 : 38 IC 305 : 18 Cr LJ 273.

——Violation of S. 146 Berar Municipal Act — Magistrate if requires complaint from Municipal Committee to take cognizance.

See Barar Municipal Act (1886) S. 146.

11 Cr LJ 513 (Nag).

——Ss. 4 (1) (h), 190 and 191 — Applicability — Cognizance on complaint.

See Criminal P. C. (1898) S. 4 (1) (h).

10 Cr LJ 18 (All).

7. Taking cognizance under Cl. (a).

(a) Complaint.

——S. 190 (1) (c) — Ss. 4 (h), 200, 190 (1) (c) and 537 — Valid complaint — Criterion — Details missing from complaint — Irregularity or omission

CRIMINAL P. C. (V of 1898), S. 190—7. Taking cognizance under cl. (a)—(a) Complaint is curable — Deficiency can be made up by examination of complainant.

See ibid, S. 4(h).

AIR 1953 Tripura 1 : 1953 Cr LJ 1463.

——S. 190 (1) (a) — Petition to Magistrate must amount to complaint.

Magistrate cannot act under S. 190 (1) (a) unless the petition presented to him amounts to a "complaint" within the meaning of S. 4 (1) (h). (Harries C. J. and Blank, J.) Subodh Chandra v. Jamser Mandal.

AIR 1949 Cal 55 : 49 Cr LJ 635.

——S. 190 (1) (c) — Person who lodges first information report making petition of protest to Magistrate — Action of Magistrate on such petition and Police diary — S. 190 (1) (c), if applies.

A petition of protest (as it is sometimes called), made to the Magistrate by a person who lodges a first information with the Police and who is reported again by them is really a petition of complaint and must be dealt with as such. (Dhavle, J.) Panu Samal v. Emperor.

AIR 1940 Pat 111 : 6 BR 368 : 12 RP 513 : 5 Cut LT 81 : 186 IC 435 : 41 Cr LJ 318.

——S. 190 (a), (c) — Discharge of accused — Subsequent application in same case by Assistant Police Prosecutor to issue warrants to certain persons — Absence of particulars of offence in application — Quashing of proceedings.

An Assistant Police Prosecutor is an officer of the Police, but it is not his business to make reports. It is open to the Magistrate to treat an application filed by the Assistant Police Prosecutor, as a complaint made by him in his private capacity.

Where the accused were discharged but subsequently, the prosecutor applied for warrant to be issued against certain persons under S. 201, I. P. C. in the same case, but no particulars as to the offence committed by them were mentioned in the application:

Held, that it was open to the Magistrate to treat the application as a complaint made by the prosecutor in his private capacity and in that case, he should have required the complainant to head his complaint as a separate complaint and not as an application filed in the old case and to supply particulars of the acts committed by the accused which brought the order within the purview of S. 201, I. P. C.

Held, also that in the circumstances, the proceedings should be quashed. (Rup Chand J. C. and Mehta A. J. C.) Bulomal v. Emperor.

AIR 1933 Sind 393 : 6 RS 118 : 146 IC 1088 : 35 Cr LJ 266.

——Complaint not inculpating complainant—Magistrate deputed for local investigation—Report recommending prosecution of complainant:

Held, that the report constituted a complaint and when the District Magistrate took cognizance on this complaint, he was taking cognizance under sub-s. (1) (a) of S. 190. (James, J.) Sukha Sahu v. Emperor.

AIR 1933 Pat 87 : 13 PLT 791 : Ind Rul (1933) Pat 91 : 141 IC 810 : 34 Cr LJ 237.

——A tahsildar alleged in writing to a Magistrate that three persons named in the document have committed an offence and had made a definite request that they should be tried under the Penal Code.

Held, that such a document sent by the tahsildar to the Magistrate was a complaint. 12 C.W.N. 438; A. I. R. 1924 All 190; 26 I. C. 148 and 11 Mad. 443 Ref. (Bennet J.) Sheo Pratab Singh v. Emperor.

AIR 1930 All 820 :1930 ALJ 1316 : 1930 Cr C 1204 : 129 IC 436 : 12 LRA Cr 25 : 15 AI Cr R 176 : 53 All 208 : 32 Cr LJ 306.

——S. 190 (1) (a) — Order to take certain person to custody on charge of robbery is not a complaint.

Where the District Judge on receiving a petition issued an "order" that certain persons should be taken into custody to the Court of the Resident Magistrate on charges of robbery and abetment of robbery: Held, such a document cannot be deemed to be a "complaint". The order of the District Judge, being ultra vires, goes for nothing and the proceedings must be quashed. (Kincaid, J. C. and Raymond, A. J. C.) Pohumal v. Emperor.

AIR 1922 Sind 9 : 15 SLR 119 : 65 IC 481 : 23 Cr LJ 97.

——S. 190 (1) (a), (c) — Taking cognizance.

Where the complaint was of an offence under the Burma Municipal Act, S. 195 of which barred the taking of cognizance except upon a complaint,

Held that though the Magistrate recorded that he took cognizance under S. 190 (1) (c) he must be considered to have taken cognizance under S. 190 (1) (a). (Irwin Offg. C. J. Hartnoll and Ormond, JJ.) Meshidi Khan v. Rangoon Municipal Committee.

4 LBR 300 : 14 Bur LR 250 : 8 Cr LJ 505.

——Ss. 190 (1) (a), 4(h), 200, 537, 556 — Taking cognizance — Failure to examine complainants on oath.

The Superintendent of Land Records made a short report to the Deputy Commissioner stating that tax tickets had been tampered with and that an enquiry was necessary. The Deputy Commissioner directed the Akunwun to make an inquiry. The Akunwun submitted a report to the Deputy Commissioner who was also the District Magistrate, stating that there was a prima facie case against the accused, showing that he had collected revenue in excess of the authorised amount by means of falsified receipts made by him, and had committed offences under sections 417 and 477A of the Penal Code. The Deputy Commissioner

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took up the report in his capacity as a Magistrate, and issued a warrant against the accused under section 477A of the Penal Code.

Held that the report of the Akunwun was a complaint, and the action of District Magistrate was taken under clause (a) and not under clause (c) of section 190(1). The fact that the District Magistrate was also the Collector would not bar him from trying the case. The only connection he had with the proceedings as Deputy Commissioner or Collector was that he ordered the Akunwun to make an inquiry, and the only sense in which he might be said to have initiated the proceeding was in his issuing a warrant when a complaint was made to him as a Magistrate. (H. Adamson, J.) Nga Ba v. King-Emperor.

10 Bur LR 150 : 1 Cr LJ 671.

——Ss. 190 (1) (a) and 191 — While trying A offence disclosed against B — Cognizance of offence against B.

Where a Magistrate who was clearly seized with the trial of an offence of theft found that the accused was not guilty, but another person was, held, that the Magistrate was competent to try him, as he took cognizance of the offence under Cl. (a) and not Cl. (c) of S. 190 (1). (Clark C. J. and Robertson, J.) Qutba v. Emperor

32 PR 1904 Cr : 68 PLR 1904 : 1 Cr LJ 511.

7. Taking cognizance under cl. (a).

(b) Who can lodge complaint.

——S. 190 (1) (a) — Party before Liquidation officer under U. P. Encumbered Estates Act committing offence.

Under the U. P. Encumbered Estates Act (XXV (25) of 1934) whether a liquidation officer is or is not a Court, he, in his capacity as a public officer, is not prevented by any rule of law from making a complaint if he considers that a party in a proceeding pending before him has committed an offence. (Harish Chandra and Agarwala, JJ.) Channu Lal v. Rex.

AIR 1949 All 692 : ILR (1950) All 571 : 1950 All WR 147 : 1950 All Cr C 56 : 51 Cr LJ 199.

——S. 190 (a) — Magistrate can take cognizance of offence on complaint by Judge based on facts obtained in a case tried by him without jurisdiction.

Section 190 does not prevent the Magistrate from taking cognizance of an offence on a complaint made by a judge who in the course of the performance of his duties, even in a case in which according to law he had no jurisdiction though under a mistaken view of the law he was supposed to have jurisdiction, comes to know of certain facts which led him to the conclusion that an offence has been committed: 25 AIR 1938 All 449, Rel on; 23 AIR 1936 P C 253, Ref. (Yorke, J.) Emperor v. Rasul Ahmad.

AIR 1947 All 173 : 1947 ALJ 98 : 1947 OAHCB 20 : 1947 AWRHC 44 : 231 IC 148 : ILR (1947) All 411 : 48 Cr LJ 706.

CRIMINAL P. C. (V of 1898), S. 190—7. Taking cognizance under cl. (a) — (b) Who can lodge complaint

——Ss. 190 (1) (a) and 200 — Pardanashin lady —Complaint — Condition for validity — Taking cognizance of.

A Magistrate can take cognizance of a complaint made by a Pardanashin lady, provided he is satisfied that it is her own complaint and the means by which the complaint reaches the Magistrate is immaterial though under S. 200 a complaint should ordinarily be presented in person. (Sharfuddin and Coxe, JJ.) Abhoyeshwari v. Kishori Mohan Banerji.

AIR 1914 Cal 479 : 18 CWN 1020 : 23 IC 700 : 42 Cal 19 : 15 Cr LJ 348.

——S. 190 (1) (a) and (c) — Complaint by person other than one affected by offence.

A Magistrate can take cognizance of a complaint even though it was not lodged by the person affected by the offence. (Piggott, J. C.) Parshadi Pasi v. Baljitt Singh.

20 IC 233 : 14 Cr LJ 409 (All).

——Applicability.

Case where offence mentioned in S. 195 is committed before or brought to notice of presidency Magistrate in judicial proceedings. Proper course of action to be followed.

See ibid S. 476.

6 Cr LJ 326 (Bom).

8. Taking cognizance under Cl. (b).

(a) Report by Police Officer.

(i) Charge-sheet, if police report.

(ii) Complaint by Police Officer.

(iii) Police report defective or negative —Cognizance, if can be taken.

(iv) Report of non-cognizable case.

(v) Report of Revenue Officer.

(vi) Report of Sub-Inspector of Excise.

(b) "Such facts".

8. Taking cognizance under Cl. (b).

——S. 190 (1)—Taking cognizance of offence under S. 6 Prevention of Corruption Act without necessary sanction.

See Prevention of Corruption Act (1947), S. 6.

AIR 1953 Pat 225 : 1953 Cr LJ 1289.

——S. 190 (1) (a)—Complaint—Complainant examined — Magistrate must be deemed to have taken cognizance — Order directing police to register case contravenes S. 202.

See ibid, S. 156 (1).

AIR 1953 Assam 1 : 1953 Cr LJ 168.

——S. 190 (1) (b) — Committal proceedings — Propriety of filing piecemeal challans— Commencement of trial on receipt of first challan without waiting for final challan—Validity of trial. Recording of evidence relating to other and final challan filed after completion of investigation — Legality.

See ibid, S. 208.

AIR 1952 Him Pra 81 : 1952 Cr LJ 1720.

——Case of bribery made cognizable by Prevention of Corruption Act, S. 3 — Case investigated

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by Police —Police filing complaint of prosecution witnesses and other relevant documents filed — Complaint held came within purview of S. 190 (1) (b)— Whether it was in form of complaint or report made no difference. (Lakshmi Narain, J. C.) P. K. Subbiah v. State.

AIR 1952 Tripura 1 : 1952 Cr LJ 1201.

——Police officer making complaint to Magistrate in respect of non-cognizable offence — Complaint is valid — Certificate of fitness under Art. 134 (1) (c) of the Constitution cannot be issued.

See Constitution of India, Art. 134 (1) (c).

AIR 1952 Kutch 54 : 1952 Cr LJ 1037.

——Magistrate's refusal to accept recommendation of Police under S. 173—Power of Magistrate to call upon complainant to produce evidence.

See ibid, S. 173.

AIR 1952 Pepsu 29 : 1952 Cr LJ 482.

——Ss. 190, 439—Magistrate after examining few witnesses in case against B ordering police to send charge sheet against 'K' also—'K' tried and convicted — Cognizance of offence by 'K' whether taken under Cl. (b) or (c) of S. 190 (1)—Concurrent finding of Courts whether can be set aside in revision after going through evidence in case.

At about 2 A. M. on the night following 21-8-1948, 'B' was caught in the house of 'A', the complainant. 'G' came to the scene of occurrence, wrote out a report to the officer in charge of the police station and gave it to 'A' who produced it at the police station. This report mentioned 'B' as a thief and hinted that another thief was stated to have run away. After the production of this report at the police station and on enquiry from the officer 'A' made a detailed statement wherein he disclosed the name of the other thief as 'K'. After necessary investigation 'B' alone was sent up for trial. After examining 'A' and another witness the Magistrate ordered the police to submit a charge-sheet against 'K' as well. A charge-sheet against 'K' was submitted and 'B' and 'K' were found guilty and convicted under S. 457, Penal Code. This conviction was affirmed in appeal. In revision before the High Court, 'K' contended that the Magistrate in directing the police to submit a charge-sheet against him exercised his powers under S. 190 (1) (c), Criminal P. C., but without observing the procedure laid down in S. 191:

Held (Deka J., agreeing with Thadani C. J.) that the cognizance of the case having been taken under S. 190 (1) (b), Criminal P. C., S. 191 was not applicable to the case.

'Per' Deka, J.—Section 351, Criminal P. C., gave wide power to the Court taking cognizance of an offence to proceed against a person originally not summoned or arrested if it appears from the evidence that some offence may be committed by such a person, and S. 204, Criminal P. C., also gives sufficient jurisdiction to the Magistrate for

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acting in such a manner as he did. It cannot be construed from the facts that S. 556, Criminal P. C., had any application in this matter or that the Magistrate acted both as the Judge and the prosecutor. A fresh charge-sheet is permissible and the cognizance of the case was taken on the basis of that charge-sheet.

'Per Ram Labhaya, J.'— That the procedure followed by the Magistrate was irregular inasmuch as provisions of S. 191 were not observed as the cognizance against 'K' was taken by the Magistrate under S. 190 (1) (c).

Held further (Deka J., agreeing with Thadani C. J.) it would be wrong in revision to go into evidence to set aside the concurrent findings of the Courts below and that the conviction of 'K' should be upheld.

(Ram Labhaya J.) that the discrepancies between the first information report and the evidence at the trial were sufficient for setting aside the conviction of 'K' in revision. (Deka J. on Difference between Thadani C. J. and Ram Labhaya, J.) Kachu Gogai v. State.

AIR 1951 Assam 151 : ILR (1951) 3 Assam 439 : 52 Cr LJ 1457.

——S. 190 (1) (b)—Absence of first report under S. 157—Cognizance taken by Magistrate—Validity.

See ibid, S. 157.

AIR 1950 Kutch 59 : 51 Cr LJ 1319.

——Story of assault not disbelieved by Police but merely reported to be exaggerated —Magistrate can take cognizance upon Police report — Magistrate required to consider whether prima facie case is made —Whether disqualified from continuing trial.

A story of assault that is only exaggerated, still discloses an offence of assault; and the mere fact that the Police have given a further ground for not taking action—the fact that the complainant was not very anxious about the case — is immaterial. The Magistrate can take cognizance of the offence upon the report of the Police. (Horwill, J.) In re Alfred Paul.

AIR 1944 Mad 166 : (1943) 2 MLJ 597 : 1943 MWN 802 : 16 RM 571 : 212 IC 77 : 45 Cr LJ 508.

——Cognizance of an offence — Court need not know beforehand what each witness is to prove.

No provision of law requires that the Magistrate before taking cognizance should know exactly what each of the witnesses named in the charge sheet will prove; where the charge sheet alleges that a certain offence will be established by the evidence of certain witnesses this is sufficient to enable the Magistrate to take cognizance. (Coutts and Ross, JJ.) H. Grant v. Emperor.

AIR 1922 P 294 (2) : 65 IC 421 : 23 Cr LJ 69.

——S. 190 (1) (b) and (c) and S. 351—Magistrate directing prosecution—Cognizance under.

Where the trying Magistrate after the close of the case directs the Police to institute criminal

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proceedings against a witness, and tries the case himself after receiving the police report, he takes cognizance under S. 190 (b) and not under S. 190 (c) or S. 351. The trial is however illegal as the same person cannot be the prosecutor and a Judge. (Pratt and Fawcett, JJ.) Gundo Chikko Kulkarni v. Emperor.

AIR 1921 Bom 365 : 23 Bom LR 842 : 62 IC 875 : 22 Cr LJ 603.

——Ss. 190 (1) (a), 192, 200 and 202—Failure to examine complainant—Process issued to witnesses —Transfer of case—Non-cognizable offence —To take cognizance on Police report.

A duly empowered Magistrate taking cognizance of a non-cognizable offence on a Police report under S. 100 (b) of the Cr. P. Code must immediately summon the accused. He cannot hold a judicial enquiry under S. 202 of the Cr. P. Code. (Mullick, J.) Eqbal Khan v. Emperor.

AIR 1919 Pat 319 : 51 IC 173 : 20 Cr LJ 413.

—Ss. 190 (1) (b) and 537 — Police report — Cognizance.

In the course of a trial of an accused on the report of the prosecuting inspector two other persons were added as accused and the evidence already recorded was read over to the new accused. There was nothing irregular in the procedure, as the proceedings against the new accused were started by the Magistrate on taking cognizance of facts in a Police report. Irregularity caused by reading the evidence was curable by S. 537 unless objection was taken at once or immediately after the procedure was taken. (Knox, J.) Gulab Rai v. Emperor.

AIR 1917 All 133 : 38 IC 985 : 18 Cr LJ 425.

——Ss. 190 (1) (b) and (c) and 191 — Notice — Chalan case — Accused added by Magistrate.

The Magistrate in adding an accused, of his own accord, took cognizance of the offence of the latter accused under Cl. (b) and not Cl. (c) of Sub-S. (1) of S. 190, and was consequently not bound to act under S. 191. (Drake-Brockman, J. C.) Sarwa v. Emperor.

9 NLR 65 : 19 IC 946 : 14 Cr LJ 290.

——S. 190, Cl. (1) (b) — Applicability.

Where a Magistrate on the strength of the evidence of a police Sub-Inspector given in the course of a trial of a person on a charge of theft, directed the applicant, who was present in Court under custody on a different charge, to be put in the dock as co-accused and tried them both, and convicted them both. Held, that the Magistrate took cognizance under S. 190, Cl. (1) (b) and the conviction was legal. (Shaw, J. C.) Nga Po Yon v. King-Emperor.

UBR 1910, 1st Qr, Cr PC 2 : 7 Ind Cas 461 : 11 Cr LJ 489.

——Magistrate ordering accused to be challaned on report by police under S. 62 — Necessity to proceed under S. 191 before he tries case himself.

See ibid S. 62.

11 Cr LJ 150 (Lah).

——Power of Magistrate to order prosecution of person not arrested by police.

See Criminal P. C. Ss. 169, 173 and 190.

7 Cr LJ 414 (Low Bur.).

——Appellate Court reversing finding and sentence — Court's jurisdiction to try the offender iself instead of ordering retrial — Cognizance under S. 190 (1) (b).

See ibid S. 423.

6 Cr LJ 133 (Mad).

——Ss. 190, 251, 253, 529, 530 — Irregular proceedings by Magistrate without jurisdiction.

Police sending accused A and B for trial charging A under S. 379 and B under S. 411, I. P. C.—Third class Magistrate taking cognizance — A convicted and sent to Sub-Divisional Magistrate for whipping — B discharged — Magistrate also directing arrest of C who was present in Court for offence under S. 489 — S. D. M. re-arresting B and trying three accused — S. D. M. held took cognizance of offence under S. 190 (1) (b). (G. W. Shaw) Nga Kun v. Emperor.

1905 URR 4th Qr, Crim Pro Code 41 : 3 Cr LJ 426.

——S. 190, Cls. (b) and (c) — Taking cognizance of an offence — Held cognizance was taken under Cl. (b) and not under Cl. (c).

In the first information report made to the police, two accused were named and others were unnamed. Against the persons named, the Magistrate issued warrants and after reading a subsequent police report he issued warrants against the three accused also who were not named in the first information.

Held that the Magistrate took cognizance of the case under cl. (b) of S. 190 and not under cl. (c). (Pratt & Handly, JJ.) Rajani Kanto Chatterji v. Emperor.

8 Cal WN 864 : 1 Cr LJ 844.

8. Taking Cognizance under cl. (b).

(a) Report by Police Officer.

——Ss. 190 (1) (a) and (b) and 202 and 537 — Complaint forwarded to police for inquiry and report — Report received — Magistrate taking cognizance under S. 190 (1) (b) — Propriety — Failure to examine complainant — Effect.

On a petition of complaint, the Magistrate without examining the complainant on oath forwarded the same to a Police Officer for enquiry and report under S. 202, Criminal P. C. On receipt of the police report, the Sub-Divisional Magistrate directed that cognizance should be taken under S. 190 (1) (b), Criminal P. C. The accused were convicted at the trial. In revision the accused contended that the Magistrate having

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taken cognizance under S. 190 (1) (b) was not justified in ignoring the police report which contained statements of complainant and his witnesses at variance with those given at the trial:

Held, that the report received from the Police Officer could be deemed to be a police report within the meaning of S. 190 (1) (b) so as to give jurisdiction to the Magistrate to take cognizance of the offence under S. 190 (1) (b). That being so, the accused could legitimately complain that that report would be a part of the record which could be availed of by them and used by them, if necessary, for contradicting the witness examined for the prosecution. But that would of course not constitute a statement under S. 162 though it would be used as an admission made by the complainant or his witnesses if they were confronted with such a statement or its genuineness had been otherwise proved in the case.

Held further that in the circumstances the Magistrate really took cognizance under S. 190 (1) (a) and that he acted under a wrong impression when he noted that he was taking cognizance under S. 190 (1) (b).

His omission to examine the complainant on oath was only an irregularity not vitiating the trial. (Panigrahi, J.) Api Samal v. Bisi Mallik.

AIR 1953 Orissa 83 : 18 Cut LT 158 : 1953 Cr LJ 655.

——Report of Police Officer — First report giving all necessary particulars — Supplementary report naming only formal witnesses — First report whether vitiated.

See Criminal P. C. (1898), S. 173 (1) (a).

AIR 1951 SC 441 : 52 Cr LJ 1491 (SC).

——Ss. 190 (1) (b), (c) — "Report" mentioned in S. 190 (1) (b) is not limited to report mentioned in S. 170.

A Police report mentioned in S. 190 (1) (b) of the Criminal P. C. is not limited to a report mentioned in S. 170 of the Code and the preceding sections. (Ghulam Hasan, J.) Lallu Singh v. Emperor.

AIR 1943 Oudh 226 : 15 RO 474 : 1943 OWN 80 : 1943 AWR 11 : 206 IC 107 : 44 Cr LJ 492.

——S. 190 (b) — Prosecuting Inspector applying that prosecution witness should be put on trial.

Where, after a Magistrate had committed certain persons accused of theft to the Court of Session, another person was examined as a prosecution witness and the Prosecuting Inspector presented a petition before the Magistrate praying that that witness also should be put on trial under S. 457, I. P. C.

Held, that the application by the Prosecuting Inspector was a report in writing made by a Police Officer within the meaning of S. 190 (b),

CRIMINAL P. C. (V of 1898), S 190 — 8. Taking cognizance under cl. (b) — (a) Report by Police Officer

Criminal P. C. (Bajpai, J.) Chuni Lal v. Emperor.

AIR 1933 All 399 : Ind Rul (1933) All 420 : 1933 ALJ 735 : 144 IC 380 : 34 Cr LJ 761.

——There is no justification for restricting the term "police report" in S. 190 (b) to reports under S. 173 only. (1911) 5 S. L. R. 1; 12 Cr LJ 92, overruled. (Kincaid, J. C., Raymond and Aston, A. J. Cs.) Mehrab v. The Crown.

AIR 1924 Sind 71 : 83 IC 885 : 17 SLR 150 : 26 Cr LJ 181 (FB).

The words "Report of a Police Officer" refer to the report of a police officer in cases in which he is authorised to investigate by the Code. (Shadi Lal, C. J. and Le Rossignol, J.) Emperor v. Ghulam Hussain.

AIR 1925 Lah 237 : 82 IC 753 : 6 Lah LJ 606 : 25 Cr LJ 1361.

——Police report — What is — Notice of act.

"Police report" in S. 190, Cr. P. C. means a report within the meaning of S. 170. When a Magistrate takes cognizance of an offence under S. 190, a judicial act is performed by them. (Mookerjee and Chatterjee, JJ.) Nagendra Nath Chakrabarty v. Emperor.

AIR 1924 Cal 476 : 51 Cal 402 : 81 IC 220 : 38 CLJ 388 : 25 Cr LJ 732.

——S. 190 (1) (b) — "Police report" — What amounts to.

'Police Report' is not restricted merely to reports under Chap. XIV of the Code upon information lodged to the Police but embraces all reports submitted under S. 24 of the Police Act. An application by the police to a Magistrate to take action against a person amounts to a 'Police Report' within S. 190 (b) of the Code. (Jwala Prasad, J.) Abdul Ali v. Emperor.

AIR 1920 Pat 700 : 1 Pat LT 446 : 59 IC 41 : 22 Cr LJ 9.

——Ss. 190 (1) (b) and 173 — Police report — Treated as complaint — Omission to examine complainant.

The Police report referred to in S. 190 (1) (b) of the Cr. P. Code means a Police report under S. 173 of the Code, i.e., a report in the course of an investigation of a cognizable offence. If the report be called a complaint under S. 190 (a) the non-examination of the complainant on oath is fatal to the prosecution. 2 Pat L. J. 657, Ref. (Das, J.) Ram Lal v. Emperor.

AIR 1920 Pat 614 : 1 Pat LT 73 : 55 IC 285 : 21 Cr LJ 269.

——S. 190 (1) (b) — Police report — What is.

The term "Police report" in S. 193 is not coextensive with that in S. 170 of the Code but includes one made in non-cognizable case under a Magistrate's order. (Knox, J.) Sarferaz Khan v. Emperor.

11 ALJ 331 : 19 IC 314 : 14 Cr LJ 218.

——S. 190 (1) (b) — Police report.

CRIMINAL P. C. (V of 1898), S. 190—8. Taking cognizance under cl. (b) — (a) Report by Police Officer The report referred in S. 190 (1) (b) is that described in S. 173. (Pratt, J. C., and Crouch, A. J. C.) Ahmed Khan v. Emperor.

5 SLR 1 : 9 IC 492 : 12 Cr LJ 92.

(Overruled in AIR 1924 Sind 71 : 26 Cr LJ 181).

——S. 190 (1) (b) — Police report.

S. 190 (1) (b) includes all kinds of police reports and not only reports under chapter 14 or reports in cognizable cases. (G. W. Shaw) Emperor v Nga Thaung.

11 Bur LR 135 : 2 Cr LJ 322.

——S. 190 (1) (b).—Police report.

The words "police reports" in S. 190 (1) (b) Cr. P. C. include all kinds of reports, and not only reports under Ch. XIV of the Code or reports in cognizable cases. (G. W. Shaw.) King Emperor v. Nga Thaung.

UBR 1904 3rd Qr., Crim. Pro. Code 25 : 1 Cr LJ 1047.

——S. 190 (1) (b)—Police Report.

The expression "Police report" in S. 190 (1) (b) does not refer exclusively to reports under Ch. XIV of the Code. It refers to and includes any report by a Police Officer, whether in a cognizable or non-cognizable case.

1 Cr LJ 193 (Low Bur).

8. Taking cognizance under cl. (b) — (a) Report by Police Officer—

(i) Charge-sheet, if police report.

——Ss. 190 and 253 — Failure of prosecution to submit charge-sheet after repeated adjournments.

Until the charge-sheet has been filed a Magistrate cannot be said to have taken cognizance of any offence. The Magistrate can take cognizance of the offence and direct the issue of process only on receipt of a Police Report under S. 190. Till that stage is reached, he is said to be acting only as a Magistrate controlling the investigation made by the Police, and having the power to grant time to the Police to remand the accused to the custody pending investigation. When, after repeated adjournments, the Police fails to put up a charge-sheet the Magistrate is justified in releasing the accused from his bail bond and leaving it open to the Police to come forward later with a complaint. When, therefore, a charge-sheet is actually filed later on, the accused is really not before the Court, but he cannot be said to have been discharged under S. 253 when he was released from the bail bond and the Magistrate is competent to take the charge-sheet on his file and direct the issue of process and fresh complaint is necessary to be filed. (Panigrahi, J.) State v. Siba Prasad.

AIR 1953 Orissa 84 : 18 Cut LT 174 : ILR (1952) Cut 323 : 1953 Cr LJ 672.

——S. 190 (1) (b) and (a) — Irregularity in investigation and arrest of accused.

Even if an irregularity has been committed by

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a Sub-Inspector in the investigation of a cognizable offence and in arresting the accused, the charge sheet submitted by him to the Magistrate can be treated as "a report made in writing by a police officer" within the meaning of S. 190 (1) (b) and the Magistrate has jurisdiction to try the case in view of the provisions of S. 156 (2).

Even supposing that the charge-sheet cannot be treated as a report within the meaning of S. 190 (1) (b) it can be treated as a 'complaint' within the meaning of S. 4 (1) (h) and would therefore fall under S. 190 (1) (a) and the Magistrate has jurisdiction to take cognizance of the offence. (Rajadhyaksha and Gajendragadkar, JJ.) Rustom Ardeshir v. Emperor.

AIR 1948 Bom 163 : 49 Bom LR 821 : ILR (1948) Bom 66 : 1948 Bom Cri Cas 184 : 49 Cr LJ 196.

——S. 190 (1) (b) — Charge-sheet is merely the police report under S. 190 (1) (b) — Cognizance of case taken before police report under S. 190 (1) (b) — Separate case need not be registered on police report.

A charge-sheet submitted by the police is nothing more than a report in writing of the facts of an offence referred to in S. 190 (1) (b), Criminal P. C. If cognizance of an offence has already been taken by a Magistrate, and a charge-sheet with regard to it is submitted by the police after such cognizance has been taken, it is not obligatory upon the Magistrate to register a case on the basis of that charge-sheet separately. (Kaul, J.) Sangam Lal v. Nasir Khan.

AIR 1947 Oudh 68 : 1946 OA 197 : 1946 AWR CC 197 : 1947 OWN 27 : 21 Luck 593 : 226 IC 305 : 47 Cr LJ 887.

——S. 190 (1) (b) — Statement of fact not made in charge-sheet but found in document annexed to charge-sheet—If sufficient compliance.

Where the facts, though not actually written on the charge-sheet, were contained in a separate document annexed to it :

Held, that it was sufficient compliance with S. 190 (1) (b), Criminal P. C. (Agarwala, J.) Hemendra Nath v. Emperor.

AIR 1937 Pat 160 : 3 BR 114 (2) : 9 RP 243 : 17 PLT 932 : 165 IC 966 : 38 Cr LJ 94.

——S. 190 (1) (a) — Charge sheet in non-cognizable case.

A charge-sheet sent up in a non-cognizable case can be treated as a complaint within the meaning of S. 190 (1) (a), Criminal P. C., and the Magistrate can take cognizance of the case under that clause. (Beaumont C. J. and Broomfield, J.) Raghunath Lahanusa Walvekar v. Emperor.

AIR 1932 Bom 610 : 34 Bom LR 901 : Ind Rul (1932) Bom 484 : 139 IC 281 : 33 Cr LJ 733.

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Where the Court makes an order for investigation under S. 155 (2) and a charge-sheet is filed

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after making the investigation, that charge-sheet can be regarded as coming under the description of report ; but if such charge-sheet, after mentioning sections of Penal Code, fails to give any details or circumstances of any description, the provisions of S. 173 which require that the nature of the information should be stated and those of S. 190 (1) (b) which require that the facts constituting the offences should be stated are disregarded and so prosecution cannot be based on such charge-sheet treating it either as report or complaint. 37 Cal. 49 and AIR 1924 Cal. 476, Foll. (Mirza and Broomfield, JJ.) In re Shivlingappa Bhagappa.

AIR 1930 Bom 372 : 32 Bom LR 782 : 1930 Cr C 891 : 15 AI Cr R 56 : 127 IC 110 : 31 Cr LJ 1142.

8. Taking cognizance under Cl. (b) — (a) Report by Police Officer—

(ii) Complaint by Police Officer.

——S. 190 (1) (b)—The report of a Police Officer, whether in a non-cognizable or in a cognizable offence, does not amount to a complaint. (Gruer, J.) Emperor v. Babu Lal Munilal.

AIR 1936 Nag 86 : 19 NLJ 120 : 8 RN 258 : ILR (1936) Nag 50 : 162 IC 308 : 37 Cr LJ 587.

——There is nothing either in the Police Act, Ss. 23, 24 or 25 or in the Cr. P. Code, which would in any way prevent a police officer from lodging a complaint with regard to a non-cognizable offence. (Wort, J.) Lalbihari Singh v. Emperor.

AIR 1929 Pat 514 : 10 PLT 601 : 1929 Cr C 274 : 120 IC 297 : 31 Cr LJ 55.

——Even a non-cognizable offence can be taken cognizance of on police complaint.

The reoprt of a police officer in respect of a non-cognizable offence if it contains an allegation in writing to a magistrate with a view to his taking action under the Code that some person has committed an offence would amount to a complaint within the meaning of S. 4 (h). A magistrate can in a proper case treat a police report of a non-cognizable offence as a complaint and take cognizance under S. 190, cl. (a), especially where such report is made by the police officer regarding an offence committed by his subordinate. 23 Bom 150 and AIR 1926 Mad 865, Foll.; AIR 1925 Bom 131 Dist. (Fawcett and Patkar, JJ.) Emperor v. Shivaswami Guruswami.

AIR 1927 Bom 440 : 51 Bom 498 : 29 Bom LR 742 : 105 IC 459 : 28 Cr LJ 939.

——A police officer is not prohibited under the Cr. P. Code from presenting a complaint to the Magistrate in a non-cognizable case. (Shadi Lal, C. J. and Le Rossignol, J.) Emperor v. Ghulam Hussain.

AIR 1925 Lah 237 : 82 IC 753 : 6 Lah LJ 606 : 25 Cr LJ 1361.

CRIMINAL P. C. (V of 1898), S. 190 — 8. Taking cognizance under cl (b)—(a) Report by Police Officer —(ii) Complaint by police officer

——Ss. 190 (1) (a) and (c), 100 and 202 —Report of investigating Police Officer — Prosecution of informant — Police report or complaint— Making a false charge — Order making over report to another Magistrate for issue of process after hearing accused.

The investigating officer submitted a report under S. 103 of the Cr. P. Code stating that a cognizable case of which information had been given was false and recommending the prosecution of the petitioner. The Magistrate before whom the report was placed called upon the petitioner to show cause against prosecution for making a false charge, referred the matter to another Magistrate, and, on receiving a report, summoned the petitioner to answer a charge under S. 211, I.P.C., as recommended in the report. Held that the report of the Police Officer so far as S. 211, I.P.C., was concerned, was either a Police report or complaint and in either case the Magistrate had jurisdiction to take cognizance thereon, and treating it as a complaint and the omission to examine the Police Officer was a mere irregularity. (Richardson and Huda, JJ.) Bhairab Chandra Barua v. Emperor.

AIR 1919 Cal 433 : 46 Cal 807 : 23 CWN 484 : 29 CLJ 318 : 53 IC 698 : 20 Cr LJ 794.

——Ss. 190 (1) (a) (b) and 200—Illegal possession of opium — Police report — Cognizance of offence by Magistrate.

On a prosecution and conviction of the accused on a report of an Excise Sub-Inspector under S. 9 (c) of the Opium Act, held, that the proceedings before the Magistrate were irregular, inasmuch as he was not properly in seisin of the case. There was no regular complaint before him, and even if there was, his omission to examine the complainant on oath as required by S. 208, Cr. P. C. was an illegality which vitiated the proceedings. (Das, J.) Lachmi Narain v. Emperor.

AIR 1919 Pat 452 : 53 IC 150 : 20 Cr LJ 742.

——S. 190 (1) (b) —Letter of a Police Officer — Non-cognizable case—Irregularity.

The Superintendent of Police in a letter to the Deputy Commissioner charged a Police Officer under suspension with extortion, and, on this letter being placed before the Magistrate taking cognizance of case, a warrant was issued against the petitioner. Held, that if the letter of the Superintendent of Police was not a Police report within S. 190 (1) (b), it was a complaint. The non-examination of the Superintendent on oath on the complaint was a mere irregularity which did not vitiate the proceedings taken. (Richardson and Huda, JJ.) Harihara Roy v. Emperor.

AIR 1919 Cal 383 : 23 CWN 481 : 29 CLJ 383 : 52 IC 595 : 20 Cr LJ 675.

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8. Taking cognizance under cl. (b) — (a) Report by Police Officer—

(iii) Police report defective or negative — Cognizance, if can be taken.

——S. 190 (1) (b) — Police report not conforming to S. 173 (1) (a) — Cognizance of offence cannot be taken by Magistrate.

See ibid, S. 173 (1) (a).

AIR 1952 Tripura 14 : 1952 Cr LJ 1405.

——S. 190 (1) — Cognizance of case by Magistrate on negative report under S. 173 — Cognizance is taken not under cl. (c), but under cl. (b) of S. 190 (1) : 5 Cr LJ 275 (All.) and 19 Ind Cas 496 (Nag). Rel. on. (Din Mohammad and Cornelius, JJ.) Mohd. Niwaz v. Emperor.

231 IC 354 (Lah).

——Police report under S. 173 defective—No cognizance of case to be taken.

See Criminal Procedure Code (Act V of 1898), S. 173.

11 Cr LJ 145 (2) (Cal).

8. Taking cognizance under cl. (b) — (a) Report by Police Officer—

(iv) Report of non-cognizable case.

——Ss. 190 (b) (c), 200 Proviso (aa) and 4(1) (h) — Police report of non-cognizable offence — Court can take cognizance of — (Travancore Cr. P. C. S. 186) — Penal Code (1860), S. 288.

By virtue of S. 190 (1) (b) and Proviso (aa) to S. 200 of the Criminal Procedure Code as amended in 1923 the Magistrates mentioned in S. 190 are entitled to take cognizance of even non-cognizable offence upon a report made in writing by a police officer without examining the officer upon oath. Section 190 (1) (c) also contemplates the possibility of information other than a formal report under S. 173 (Travancore Cr. P. C. S. 171) being received by a Magistrate from the police and shows that the Legislature did not intend that the Magistrate though empowered to take cognizance on information from any other person must, when he receives information from a police officer upon a non-cognizable offence, hold his hand and decline to take cognizance.

Further, even if a report to a Magistrate by the police with respect to a non-cognizable offence cannot be considered as a report within the meaning of S. 186 (1) (b), Trav. Cr. P. C., such report will constitute a complaint as that expression is defined in S. 4 (1) (h). Therefore, a Criminal Court can take cognizance of even a non-cognizable offence (in this case under S. 290, I.P.C.) upon a police report. ILR 26 Bom 150 (FB); AIR 1924 Lah 258; AIR 1927 Bom 440; AIR 1932 Bom 310 and 17 TLJ 816, Relied on. (Koshi, C. J.) Saramma Zachria v. State.

AIR 1953 Trav. Co. 43 : 1952 Ker LT 487 : 1953 Cr LJ 288.

——S. 190 (1) (b)—As amended in 1923 — Scope—Report in respect of non-cognizable offence by police officer—(Criminal P. C. (1898), S. 529).

CRIMINAL P. C. (V of 1898), S. 190 — 8. Taking cognizance under cl. (b)—(a) Report by Police Officer —(iv) Report of non-cognizable case

The amendment of S. 190 (1) (b) in 1923 has widened the scope of the clause. The report referred to in the amended clause includes a report of the police in a non-cognizable case which the police had not been ordered to investigate. The Magistrate has jurisdiction to take cognizance of the case upon such report provided the report states facts which constitute offence. The proceedings would not be vitiated by reason of the police report being based on investigation which had not been ordered by a Magistrate. Even if it be held that there is any defect in taking such cognizance the defect is curable under S. 529 if the Magistrate has acted in good faith. (Chowdhry, J. C.) State v. Nilam Das.

AIR 1952 Him Pra 74 : 1952 Cr LJ 1712.

——S. 190 (b) —Effect of amendment in 1923 — Report of police officer — Reports by police in non-cognizable cases are included — Non-cognizable offence under S. 11, Suppression of Brothels Act (Burma Act) — Report by police officer after illegal search — Magistrate taking cognizance on such report — Illegal entry held did not vitiate subsequent prosecution — (Case under (Burma) Criminal P. C.) 26 Bom LR 1225, Dissent.; 7 Rang 771; 11 Rang 107 and ILR (1941) Rang 552, Rel. on. (E Maung, J.) Ma Mya Sein v. The King.

1948 Bur LR 91.

——Ss. 190 (1) (b), 155 and 162— Non-cognizable case — Complaint by Police — Jurisdiction of Magistrate to take cognizance.

A Magistrate has jurisdiction to take cognizance of a non-cognizable offence upon a complaint by the Police. Even if the complaint could not have been validly made by the Police, it might be treated as a Police report and cognizance taken under S. 190 (1) (b). (Ferrers J. C. and Aston, A. J. C) Abdullah Khan v. Emperor.

AIR 1933 Sind 188 : Ind Rul (1933) Sind 79 : 141 IC 879 : 34 Cr LJ 256.

——Can be taken cognizance of.

By virtue of S. 190 (1) (b) and S. 200 (aa) magistrates mentioned in S. 190 are entitled to take cognizance of even non-cognizable offences upon a report made in writing by a Police Officer without examining the officer upon oath. AIR 1926 Mad 865 (FB), Foll. (Dalal, J.) Prag Datt Tewari v. Emperor.

AIR 1928 All 765 : 111 IC 858 : 10 LRA Cr 19 : 51 All 382 : 11 AI Cr R 152 : 1929 ALJ 68 : 29 Cr LJ 938.

——Congnizance of non-cognizable offence upon police report.

Per Patkar J.—The wording of S. 190 is quite general and would include even a non-cognizable offence being taken cognizance of by a Magistrate upon a report by a police officer.

Per Fawcett, J.—The expression "report by police officer" does not cover a report in a case where the police officer is expressly prohibited

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from investigating and reporting. (Fawcett and Patkar, J.) Emperor v. Shivaswami Guruswami.

AIR 1927 Bom 440 : 51 Bom 498 : 29 Bom LR 742 : 105 IC 489 : 28 Cr LJ 939.

——Non-cognizable offence.

A conviction by a Court of Session cannot be set aside on revision simply on the ground that there is a defect in the initiation of proceedings in the commitment Court or some irregularity in the commitment proceedings. Magistrates are entitled to take cognizance of non-cognizable offences upon a report made in writing by a police officer without examining the officer on oath. (Tek Chand, J.) Shankar Lal v. Emperor.

AIR 1927 Lah 702 : 104 IC 437 : 28 Cr LJ 821.

——Not confined to cognizable cases. AIR 1925 Mad 672 : 26 Cr LJ 1550, Overruled.

The report of police officer mentioned in S. 190 (1) (b) is not confined to a report of a cognizable offence. It includes even the police report in a non-cognizable case. His examination on oath is not necessary. AIR 1925 Mad 672 : 26 Cr LJ 1550, Overruled. (Coutts-Trotter, C. J. Spencer and Krishnan, JJ.) Public Prosecutor v. Ratanavelu Chetty.

AIR 1926 Mad 865 : 49 Mad 525 : 25 MLW 248 : 38 MLT 177 : 1927 MWN 43 : 96 IC 983 : 52 MLJ 210 : 27 Cr LJ 1031 (FB).

——Non-cognizable case.

The petitioner made a statement to the Village Munsif that a dacoity was committed in his house and mentioned certain persons as having taken part in the dacoity. The Village Munsif forwarded the complaint to the Police, who held an investigation and referred the case as false. The Sub-magistrate to whom the papers were sent, accepted the referred charge-sheet and struck the case off his file. The police put in a charge sheet before the Sub-Divisional magistrate against the petitioner for an offence under S. 211, I.P.C. The Sub-Divisional magistrate transferred the case to the Second Class magistrate who had acted on the referred charge-sheet in the alleged dacoity case.

Held, that this was not a case in which the police could start proceedings of their own accord. The offence under S. 211 is a non-cognizable one and the Police were not empowered to investigate into a non-cognizable offence and charge the petitioner. It was open either to the accused in the alleged dacoity case or to the Village Munsif, or any Police officer to prefer complaint under S. 190, Cr. P. Code, in which case the magistrate before whom the complaint is made might take the case on his file after taking a sworn statement from the complainant. As such course was not adopted in this case, the proceedings were illegal. (Devadoss and Wallace, JJ.) Perumal Naick v. Emperor.

AIR 1925 Mad 672 : 90 IC 398 : 1925 MWN 317 : 22 MLW 209 : 26 Cr LJ 1550.

(Overruled in AIR 1926 Mad 865 : 27 Cr LJ 1031 (F B))

——Magistrate can take cognizance both in cognizable and non-cognizable offences upon a report mentioned in S. 190 (1) (b) since the provisions of S. 190 extend to all offences. The use of the words police report in S. 173 does not restrict this power as conferred by S. 190 (1) (b). (Greaves and Panton, JJ.) Bholanath Das v. Emperor.

AIR 1924 Cal 614 : 83 IC 628 : 28 CWN 490 : 26 Cr LJ 68.

——S. 190 (1) (b) — Police report — Non-cognizable case.

A Police report in a non-cognizable case is a Police report within S. 190 (1) (b), Cr P. Code. (Shaw, J. C.) Nga Saw Ke v. Emperor.

AIR 1914 Upp Bur 31 : (1914) II UBR 19 : 27 IC 145 : 16 Cr LJ 97.

——Taking cognizance.

Informal information of a non-cognizable offence submitted by a Police Officer cannot be accepted as a report within the purview of S. 190 (1) (b). (Nanjundayya O. C. J. and Chandrasekhara Aiyar, J.) Narayanasami Pillai and Narappa Chetty v. Govt. of Mysore.

12 MCCR 86 : 9 Cr LJ 331 (Mysore).

8. Taking cognizance under cl. (b) — (a) Report by Police Officer.

(v) Report of Revenue Officer.

——Encroachment on grazing grounds — Report of Revenue Officer — Procedure to be adopted in trial — Plea of ignorance.

The Crim. Pro. Code does not place the reports of Revenue Officers in an encroachment case on the same footing as those of Police Officers. In taking cognizance of an offence on the report of a Revenue Surveyor, the Magistrate must proceed either under cl. (a) or under cl. (c) of S. 190, sub-s. (1) of the Crim. Pro. Code. If he proceeds under cl. (a), he must examine the complainant thoroughly and ascertain from him the full particulars of the complaint and all necessary details. The Magistrate can proceed under cl. (c) only if he is specially empowered to do so and he is then bound by the imperative provisions of S. 191 of the Code.

Before issuing process, the Magistrate should endeavour to ascertain whether the grazing ground has been finally demarcated and whether its boundaries are defined by visible marks or are otherwise well known.

A plea of the accused that he did not know that the land which he cultivated was in a grazing ground is a good ground of defence. Of course, the mere statement of the accused is not sufficient, but the plea must be investigated. (Herbert Thirkell White, C. J.) King-Emperor v. Po Chon.

2 LBR 311 : 1 Cr LJ 1116.

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8. Taking cognizance under cl. (b) — (a) Report by Police Officer.

(vi) Report of Sub-Inspector of Excise.

——The report of a Sub-Inspector of Excise to a Magistrate is a police report only for the purposes of S. 190 Cr. P. Code. The report is not a police report for other purposes. (Cuming and Gregory, JJ.) Radhika Mohan Das v. Hamid Ali.

AIR 1927 Cal 405 . 54 Cal 371 : 100 IC 540 : 28 Cr LJ 316.

8. Taking cognizance under cl. (b) — (b) "Such facts".

——S. 190 (1) (b) — "Such facts," meaning of— Complaint to police — Report by police to Magistrate for cancellation of case — Magistrate trying and convicting accused — Legality of trial.

The words "such facts" used in Cl. (b) of S. 190, have to be read with Cl. (a), and they mean "facts which constitute such offence." Where on a complaint to the police a report is made by the police to the Magistrate for cancellation of the case such a report cannot be said to be a report of facts which constitute an offence. All that the Magistrate has to do, on receiving such a report, is to make an order that the case be cancelled, or to make a note that he accepts the recommendation of the police. And if the complainant wants to proceed with the case and get a judicial decision from the Court, he can present a regular complaint under S. 190. In the absence of such a complaint the Magistrate acts without jurisdiction in taking cognizance of the case on the referred report of the police. There being no regular complaint before him, he cannot proceed on with the case. (Chopra, J.) Mt. Ido, w/o Baru v. Gainda Singh Sobha Singh.

AIR 1952 Pepsu 38 : 1952 Cr LJ 474.

9. Taking cognizance under cl. (c).

(a) Power of Magistrate to order police to charge-sheet any person.

(b) Right of accused to be tried by another Magistrate — See also S. 191.

(c) "Upon information received" (i) information received in another capacity.

(d) "Upon his own knowledge or suspicion".

9. Taking cognizance under cl. (c).

——Ss. 190 (c) and 537 — Offence under Opium Act — Investigation carried by police — Charge-sheet signed by Superintendent of Customs and Excise — Irregularity is curable — Opium Act (1878), Ss. 14 to 20.

There is no section in the Opium Act prohibiting a Magistrate from taking cognizance of any offence under the Act except on a charge-sheet presented by the police in accordance with the provisions of Criminal P. C.

Where on the basis of investigation carried out by the police themselves, a charge sheet signed by the Superintendent Customs and Excise was presented to the Additional District Magistrate who was competent to take cognizance under S. 190 (c), Criminal P. C.

Held that the irregularity in the presentation of the charge-sheet, if any, was curable under S. 537, Criminal P. C. and was one which did not vitiate the whole trial. (Dixit, J.) Narvirchand v. The State.

AIR 1952 Madh B 17 : 1952 Cr LJ 246.

——S. 190 (1) (a) and (c) — Complaint of offence under Ss. 417/420 read with S. 120B, Penal Code —During trial Magistrate issuing process against person not named in complaint under Ss. 465-109, Penal Code — Cognizance held was taken under cl. (c) of section 190 (1). AIR 1914 Cal 801, Disting.; 1 CWN 105, Ref. (Das Gupta and Guha, JJ.) Suchandra Kamar Samanta v. The King.

AIR 1950 Cal 138 : 51 Cr LJ 636.

——S. 190 (1) (c) is subject to the provisions of S. 195, hence a person cannot be prosecuted and convicted under S. 182, Penal Code, without there being a complaint in writing of a public servant against him as required by S. 195. (Ziaul Hasan, J.) Ramprasad Dube v. Emperor.

AIR 1940 Oudh 424 : 13 RO 114 : 1940 OWN 917: 1940 AWR 307 (1) : 189 IC 702 : 41 Cr LJ 787.

——Magistrate acting on information contained in Police diary and petition of complaint filed by other side — Cl. (c) has no application. (Dhavle, J.) Panu Samal v. Emperor.

AIR 1940 Pat 111 : 6 BR 368 : 12 RP 513 : 5 Cut LT 81 : 186 IC 435 : 41 Cr LJ 318.

——There is nothing in the Code of Criminal Procedure to restrain the Sub-Divisional Magistrate from taking action in respect of an offence which he thinks has been committed but which has not been brought to his notice in the form of a complaint. S. 190 (c) gives very wide powers to the Magistrate. What is intended thereby is that the Magistrate should be able to bring his experience to bear upon any statement of facts made to him by an aggrieved person who might not know what his legal remedy was in the given circumstances. Where the person aggrieved made a petition to the Sub-Divisional Magistrate to take action against A and B under Ss. 107 or 145, Cr. P. Code, and did not allege in his petition that any offence had been committed by A and B and the Magistrate passed the following order. "This is a case under Ss. 447 and 352, I. P. C., and is transferred to the Court of the Tahsildar," and the Tahsildar tried A and B and ultimately convicted them under Ss. 352 and 447, I. P. C.

Held, that the Magistrate was acting within his jurisdiction when he read the statement as being a complaint of facts, which constituted an offence, and even if the definition of "complaint" would rule out the application of Cl. (a), S. 190, the Magistrate was certainly able to take cogniz-

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ance of the offence under Cl. (c). (Pullan, J.) Sarfaraz v. Emperor.

AIR 1930 Oudh 500 : 7 OWN 947 : 1930 Cr C 1164 : 6 Luck 354 : 32 Cr LJ 124.

——Exercise of.

Where with regard to an offence which has been the subject of police report and has not been finally disposed of by a Magistrate, a District Magistrate thinks it necessary to continue proceedings against the accused it is more regular for him to withdraw the pending case to his own file under S. 528, rather than to begin separate proceedings by taking cognizance of the same offences under S. 190 (1) (c). 5 CWN 488 and 4 CWN 242, Dist. (James, J.) Ghana Mahapatra v. Emperor.

AIR 1929 Pat 710 : 1929 Cr C 582 : 123 IC 78 : 31 Cr LJ 472.

——S. 190 (1) (c) — Cognizance of offence under —When can be taken.

A proceeding can be taken cognizance of under S. 190 (c) of the Code only when it is instituted upon information received from a person other than a Police Officer or upon the Magistrate's own knowledge or suspicion. (Jwala Prasad, J.) Abdul Ali v. Emperor.

AIR 1920 Pat 700 : 1 Pat LT 446 : 59 IC 41 : 22 Cr LJ 9.

——S. 190 (1) (c) — Cognizance by Magistrate — Enquiry preliminary to commitment.

The Magistrate's taking cognizance of an offence under S. 190 (1) (c) is no bar to his holding an enquiry preliminary to commitment. (Teunon and Cuming, JJ.) Azem Ali v. Emperor.

AIR 1918 Cal 3 : 48 IC 687 : 20 Cr LJ 47.

——S. 190 (1) (c) — Miscellaneous proceedings.

The conviction based on preliminary local investigation was bad as the Magistrate should not have tried the case himself, although S. 190 (1) (c) applies only to offences, the principle must apply to cases of a miscellaneous character, e.g. proceedings under S. 110, Cr. P. Code (Mullick and Thornhill, JJ.) Godhan Ahir v. Emperor.

AIR 1918 Pat 98 : 4 Pat LJ 7 : 47 IC 95 : 19 Cr LJ 899.

——S. 190 (1) (a) and (c) — Cognizance — Jurisdiction of Magistrate.

Cl. (c) of S. 190 deals with cases in which there has been neither a formal complaint nor a police report and Magistrate takes the initiative upon information received from any person other than a Police Officer or upon his own knowledge or suspicion. (Sharfuddin and Teunon, JJ.) Dedar Bux v. Syampada Malakar.

AIR 1914 Cal 801 : 41 Cal 1013 : 18 CWN 921 : 24 IC 954 : 15 Cr LJ 546.

——S. 190 (1) (c) — Offence of giving false evidence — Preliminary enquiry.

There is no provision in the Cr. P. Code empowering the Magistrate to take cognizance of

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the offence of giving false evidence under S. 190 (1) (c) or even refer it for preliminary enquiry. (Pratt, J. C. and Hayward, A. J. C.) Emperor v. Shoukatmal.

7 SLR 75 : 21 IC 472 : 14 Cr LJ 600.

——Ss. 190 (c), 192, 195 (b), 476 — Proceedings under the Village Act are not judicial proceedings. —The Commissioner, Pegu Division, in a proceeding under the Village Act, wrote to the District Magistrate requesting him to proceed against the petitioner under S. 476 of the Crim. Pro. Code, for an offence under S. 199, Penal Code:

Held, that no sanction was necessary under S. 195 (b) of the Crim. Pro. Code, and the District Magistrate could take cognizance under S. 190(c) and transfer the case to a Subordinate Magistrate under S. 192 of the Code. (Twomey, J.) Maung Kye v. Emperor.

8 Ind Cas 949 : 3 Bur LT 120 : 11 Cr LJ 736.

——Ss. 190 (1) (c) and 191 — Cognizance of offence under S. 190 (1) (c) — Strict observance of S. 191, necessity of.

There should be strict observance with provisions of S. 191 is a condition necessary, for the competency of the Magistrate to try a person of an offence of which he has taken cognizance under S. 190 (1) (c). (Sir Bipin Krishna Bose, Kt. A. J. C.) Emperor v. Sakhia.

3 Ind Cas 568 : 5 Nag LR 113 : 10 Cr LJ 303.

——Ss. 190, 192 and 254 — Cognizance by District Magistrate without a complaint.

A sent an application to the District Magistrate stating that Rs. 30 have been paid to the accused and that the accused had declared that he had paid the amount to the Magistrate as a bribe. The District Magistrate after recording statements of A and examining some of his witnesses, transferred the papers to the Resident Magistrate for proceeding under Section 162, I. P. C. against the accused. Held that the proceedings would not be held to be bad on the ground that there was no complaint made before the District Magistrate by some person having a personal knowledge of the fact that a bribe was offered as the District Magistrate could take cognizance of a case otherwise than on a complaint, sections 190, 192 and 254, Cr. P. C. clearly validated the proceedings taken. (E. M. Pratt, and H. N. Crouch, JJ) Emperor v. Allahwarayo Khudabaksh.

1 SLR 119 : 8 Cr LJ 374.

——Ss. 190 (1) (c) — Taking cognizance.

A Magistrate, passing orders for the issue of summons against the accused in a case placed before him by an order of the Collector to the effect that the case should be put up before the Magistrate for the issue of necessary orders, takes cognizance of the case under S. 190 (1) (c). (Rampini and Sharfuddin, JJ.) Bansi Lal v. Emperor.

12 CWN 488 : 7 Cr LJ 224.

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9. Taking cognizance under cl. (c).

(a) Power of Magistrate to order police to charge-sheet any person.

——Ss. 190, 173 and 200 — Power of Magistrate to direct police to charge-sheet accused.

Where a complainant who is dissatisfied with the report of police investigation under S. 173, Criminal P. C., files a complaint to the Magistrate the latter should dispose of the complaint in accordance with the provisions of Ch. 16 of the Code. An order directing the police to send a charge-sheet without ordering a preliminary enquiry or issuing summonses to the accused person is illegal. (Thadani C. J. and Deka J) Abdul Rahim v. Abdul Muktadin.

AIR 1953 Assam 112 : ILR (1952) 4 Assam 273 : 1953 Cr LJ 797.

——Ss. 190 (1) (c), 191 — Charge-sheet against person at instance of Magistrate — Cognizance by Magistrate on such charge-sheet — Non-compliance with S. 191, if vitiate trial.

Where a charge-sheet is filed against any person at the instance of a Magistrate and the Magistrate takes cognizance on such charge-sheet, though apparently the case is taken cognizance of on a Police report, and as such, technically comes under S. 190 (1) (b), Criminal P. C., the Magistrate being the real originator of the proceedings, his action practically comes unler S. 190 (1) (c) and as such, the principles of S. 191 must be applied. He is not therefore, competent to try that case and the accused is entitled to have the case transferred to some other Magistrate. Failure on the part of the Magistrate to apply the principle of S. 191 vitiates the whole proceedings in his Court. (Coldstream, J.) Mahomed Sadiq v. Emperor.

AIR 1938 Lah 19 : 10 RL 436 : 173 IC 324 : 39 Cr LJ 299.

——Use of — By Magistrates.

Where the police find on enquiry a complaint to be false the complainant can place the matter before a Magistrate under Sub-S. 1 (a) of S. 190. But where the Magistrate has already taken cognizance of an offence, and where the charge sheet is placed before the Magistrate, the police officer as the prosecution medium, omits the names of certain persons whose participation in the offence had up to that time been before the Magistrate, the Magistrate is not compelled in any way to follow what is after all no more than an advice tendered by the prosecuting authority. Without giving reasons, however, he should not differ from the advice. Once having taken cognizance of the offence the Magistrate is strictly independent of any opinion which the police offer to him, and he can order that any persons accused as being participators in the offence should be produced before him, to undergo the preliminary enquiry, or for trials in cases which do go to a higher tribunal for trial. If this were not the

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law the police would be in possession of powers which might be subject to the gravest abuse. As a matter of procedure the proper course in such a case would be for the Magistrate simply to call upon the Police to bring forward a charge sheet against those whom the Magistrate thinks ought to be brought before him. (Adami and Bucknill, JJ.) Raghupat Narayan Singh v. Emperor.

AIR 1924 Pat 597 : 84 IC 241 : 1924 P.H.C C 162 : 6 PLT 323 : 26 Cr LJ 241.

9. Taking cognizance under cl. (c).

(b) Right of accused to be tried by another Magistrate.

See also S. 191.

——Ss. 190 (1) (c) and 191 — Evidence recorded and prima facie case made — Accused examined — Accused not informed that they were entitled to have case tried by another Court under S. 191 — Case proceeded with and accused convicted.

The Magistrate, after recording the prosecution evidence and examining the accused who were challaned under S. 109, Criminal P. C. found that there were sufficient grounds for proceeding against the accused under S. 457, I. P. C., and issued a bailable warrant of arrest against accused. The accused appeared in Court and the Magistrate, without informing them before taking evidence that they were entitled to have the case tried by another Court as required by S. 191, Criminal P. C., framed charges under S. 448, I. P. C., and proceeded with the case:

Held, that inasmuch as the trial Court took cognizance of this case under S. 190 (1) (c), Criminal P. C., he was bound to inform the accused under S. 191, Criminal P. C., that they were entitled to have the case tried by another Court, and that failure to do this invalidated the proceedings.

The provisions of S. 191, Criminal P. C., are mandatory. (Bhide, J.) Emperor v. Malak.

AIR 1934 Lah 210 : 7 RL 207 : 151 IC 792 : 35 Cr LJ 1407 (1).

——If a Magistrate takes cognizance under S. 190 (1) (c) he must give the accused the option of being tried by some other Magistrate but this point does not arise in a case where the trying Magistrate is not the Magistrate who calls for the charge-sheet. (Courtney-Terrell, C. J. and Scroop, J.) Uma Singh v. Emperor.

AIR 1933 Pat 242 : 14 PLT 162 : 12 Pat 234 : 6 RP 237 : 146 IC 70 : 34 Cr LJ 1198.

——Ss. 190 (1) (c), 191 — Magistrate returning records to Police to deprive accused of his right under S. 191.

When a Magistrate comes to the conclusion in the course of an investigation that the accused should be prosecuted, his proper course is to pass an order under S. 190 (1) (c), Criminal P. C., ordering the prosecution of the accused and in that case, S. 191 Criminal P. C., would apply and it would be open to the accused to ask for a trans-

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fer. It is not correct for the Magistrate to send the papers to the Superintendent of Police so as to deprive the accused of his right under S. 191, Criminal P. C. (Bennet, J.) Nek Ram v. Emperor.

AIR 1931 All 273 : Ind Rul (1931) All 139 : 129 IC 267 : 32 Cr LJ 370.

——S. 190 (1) (c) — Magistrate not informing the accused that he can get his case transferred.

If the Magistrate takes cognizance of a case under S. 190 (c) but does not inform the accused that he can have his case tried by another Magistrate, the proceedings before him are illegal. (Banerji, J.) Ram Ratan v. Emperor.

AIR 1921 All 286 : 19 ALJ 138 : 60 IC 1007 : 22 Cr LJ 319.

——Ss. 190 and 537 — Proceedings suo motu by Magistrate — Failure to comply with S. 191 is illegal.

Where proceedings were initiated by a Magistrate suo motu and he did not comply with the provisions of S. 191 and inform the accused of his right to have his case tried by another Magistrate held, that the omission was not an irregularity curable by S. 537 but was an absolute illegality vitiating the whole trial. (Wilberforce, J.) Bodha v. Emperor.

AIR 1921 Lah 235 : 16 PLR 1920 : 4 PWR 1921 (Cr) : 59 IC 384 : 22 Cr LJ 96.

——Ss. 190 (1) (c) and 191—Report by Cantonment Magistrate to Asstt. Commissioner — Trial of a different person by the latter—Whether case can be transferred.

Where a Magistrate on receiving information from another Magistrate that A had committed an offence thought B to be the real culprit and proceeded to try B in his own court, the Magistrate took cognizance of the case under S. 190 (c) of the Code and the accused could claim under S. 191, to have the case transferred to another Magistrate. (Beadon, J.) Makhan Singh v. Gunner Jepson.

AIR 1914 Lah 165 : 10 PWR Cr 1914 : 65 PLR 1914 : 23 IC 469 : 15 Cr LJ 261.

——Ss. 190 (1) (c) and 526 — Take 'Cognisance,' meaning of.

Where the Police, finding an information given by a person to be false, recommended his prosecution, and the Deputy Magistrate in charge, thereupon, ordered a judicial inquiry by another Magistrate who taking evidence, summoned the accused, Held, that it was really the latter Magistrate that really contemplated the taking of proceedings against the accused and that they are entitled to have the case tried by another Magistrate. (Coxe and Chatterjea, JJ.) Anant Ram v. Alter Sarkar,

17 CWN 795 : 20 IC 409 : 14 Cr LJ 425.

——Ss. 190 (1) (c) and 202—Procedure.

If a Magistrate takes action without a complaint or Police report he is bound to inform the accused

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that he is entitled to have the case tried by another Court. (Knox, J.) Sarferaz Khan v. Emperor.

11 ALJ 331 : 19 IC 314 : 14 Cr LJ 218.

——Ss. 190 (1) (c) and 191 — Proceedings under S. 351 are independent of Ss. 190 and 191.

See Cr. P. C. S. 351.

10 Cr LJ 303 (Nag).

——Failure of magistrate taking cognizance under S. 190 (c) to inform accused that he has right to be tried by another Magistrate. Irregularity if curable.

See Criminal P. C. S. 191.

2 Cr LJ 809 (All).

9. Taking cognizance under cl. (c)—

(c) "Upon information received".

(i) Information received in another capacity.

9. Taking cognizance under cl. (c)—

(c) "Upon information received".

——S. 190 (1) (c) — Complaint and information.

If a complaint is not a valid complaint, it does not cease to be an information and, therefore, can be treated as such under cl. (c) of S. 190 (1) and it is open to the Magistrate to whom an invalid complaint is lodged to treat it as an information under S. 190 (1) (c) subject, of course, to the limitations imposed by S. 101 of the Code in this behalf. Case law discussed. (Harish Chandra and Agarwala, JJ.) Channu Lal v. Rex.

AIR 1949 All 692 : ILR (1950) All 571 : 1950 All WR 147 : 1950 All Cr C 56 : 51 Cr LJ 199.

——Ss. 190 (1) (b) and (c), 191— Complaint by letter to Magistrate — Letter forwarded to Police for investigation — Accused put on trial and convicted — Cl. (1) (c) of S. 190, if applies—Magistrate, if competent to try accused.

Clause (1) (c) of S. 190 applies to cases where the party concerned is not prepared to lodge a formal complaint and prosecute the case and the Magistrate chooses to take cognizance of the offence upon the basis of the information received by him either directly or through persons other than the complainant or the aggrieved party. Clause (1) (c) of S. 190 does not apply, where, on a receipt of a letter from the complainant informing the Magistrate of the offence, the Magistrate forwarded the letter to the Police for investigation and as a result of the investigation the accused were put up for trial and convicted. In such a case, the Magistrate must be deemed to have taken cognizance of the offence on Police report under S. 190 (1) (b) and was competent to try the accused. (Ghulam Hasan, J.) Lallu Singh v. Emperor.

AIR 1943 Oudh 226 : 1943 OWN 80 : 15 RO 474 : 1943 AWR 11 : 206 IC 107 : 44 Cr LJ 492.

CRIMINAL P. C. (V of 1898), S. 190 — 9. Taking cognizance under cl. (c) — (c) " Upon information received"

——Cognizance of offence on information by Civil Judge—Civil Judge, if must be examined before taking cognizance.

The provisions of S. 190, Criminal P. C., are exceedingly wide. There is nothing in that section which prevents a Sub-Divisional Magistrate from taking cognizance of an offence that happens to be reported to him by an officer who presides in a Court of Justice. Civil Judge is certainly a public servant and when the Magistrate takes cognizance of an offence upon a report of the Civil Judge, it is not necessary that he should be examined before the Magistrate as a complainant. However, even if he should have been examined and was not examined, that would amount only to an irregularity which would not vitiate the whole trial. (Allsop, J.) Tara Singh v. Emperor.

AIR 1938 All 449 (449) : 1938 ALJ 528 : 11 RA 158 : 1938 AWR 361 : 176 IC 960 : 39 Cr LJ 840.

——District Magistrate, if can act under S. 190 (1) (c) on invalid complaint under S. 476 from District Judge.

Complaint under S. 476 by District Judge to District Magistrate —Section 476, inapplicable to circumstances of the case— Complaint ceases to be valid complaint— But District Magistrate can proceed under S. 190 (1) (c) as an "information received from any person other than Police Officer". (James and Dhavle, JJ.) Government Advocate, Bihar v. Kumar Singh.

AIR 1938 Pat 83 : 16 Pat 571 : 19 PLT 51 : 10 RP 408 : 4 BR 274 : 173 IC 432 : 39 Cr LJ 314.

——Magistrate empowered under S. 190—Competency to act on information supplied by accused.

A Magistrate duly empowered under S. 190 (1) (c), Criminal P. C., is competent to record and act on the information furnished by the accused himself. Investigation by the Police is not an essential condition to initiate proceedings. (Waller and Krishnan Pandalai, JJ.) In re Arunachala Reddi.

AIR 1932 Mad 500 : 35 LW 607 : 62 MLJ 680 : 1932 MWN 644 : Ind Rul (1932) Mad 552 : 55 Mad 717 : 138 IC 240 : 33 Cr LJ 586.

——Reasons—Desirable.

It is desirable that a magistrate taking cognizance under S. 190 (1) (c) should record the information upon which he has acted, though he may not disclose the source of his information. But his omission to do so does not necessarily vitiate the proceedings. 35 Cal 1076, Rel. on. (Godfrey, J.) Maung Nyi Bu v. Emperor.

AIR 1926 Rang 46 : 93 IC 77 : 4 Bur LJ 211 : 27 Cr LJ 413.

——A letter written to the District Magistrate conveying information of an offence and asking for action to be taken can be treated as information under S. 190 (c) for taking action. (Neave A. J. C.) Chhote Maharaj v. King-Emperor.

AIR 1925 Oudh 144 : 81 IC 971 : 28 OC 33 : 25 Cr LJ 1147.

CRIMINAL P. C. (V of 1898), S. 190 — 9. Taking cognizance under cl. (c) — (c) "Upon information received"

——S. 190 (1) (c)—'Information received'—Meaning.

Information received from the petition of objection filed by the petitioners opposite party in the proceeding under Section 144 in showing cause against the order under the said section is not information received as against the petitioners. (Kulwant Sahay, J.) Gaju Chaudhuri v. Debi Chaudhuri.

AIR 1923 Pat 532 : 1 Pat LR 97 Cr : 72 IC 945 : 24 Cr LJ 481.

——Ss. 190 (1) (a) and 200—Complaint by private person—Investigation by Police— Examination of complainant whether necessary at the instance of a complainant.

Where on the report of the C.I.D., the Magistrate ordered the prosecution of the accused, Held, that the action was illegal. He should have examined the Police or the complainant. 11 CWN 170; 10 CWN 1090 and 775, Dist. ; 13 WR Cr 27, Foll. The power of the Magistrate to proceed upon information is intended to be used in cases in which the Magistrate has good reasons to believe that there has been a serious infringement of the law but is unable to take action in the ordinary manner for the reason that the party aggrieved is unwilling or unable to prosecute. (Sharfuddin and Roe, JJ.) Jhuna Lal Sahu v. Emperor.

AIR 1917 Pat 611 : 2 Pat LW 152 : 2 Pat LJ 657 : 41 IC 1002 : 18 Cr LJ 890.
(Overruled in AIR 1929 Pat 473 : 30 Cr LJ 1056)

——Order directing prosecution ultra vires—Validity of prosecution made in conformity.

Where a District Judge having no such powers under the Guardians and Wards Act passed an order directing the prosecution of the guardian of the minor and the District Magistrate ordered the case to be tried by the Additional District Magistrate. Held, that the District Judge's order being ultra vires went for nothing and therefore was no information under S. 190 (1) (c). The District Magistrate's order was not an order for prosecution but only an order for transfer from his court to another. Consequently there was no properly instituted criminal case before the Court until then. (Chevis, J.) Sital Das v. Crown.

87 PLR 1910 : 8 Ind Cas 247 : 11 Cr LJ 602.

——Ss. 190 (c), 439—Magistrate taking cognizance under S. 190(c) — Interference by High Court.

To justify a Magistrate in taking cognizance of an offence under S. 190(c), upon information received from any person other than a police officer, the information need not contain all the allegations necessary to be proved to establish the offence; if enough is alleged to justify the Magistrate in dealing judicially with the matter. That will be sufficient for the Magistrate acting under the clause. When recorded information is found to be sufficient to justify the Magistrate in considering that a prima

CRIMINAL P. C. (V of 1898), S. 190 — 9. Taking cognizance under cl. (c) — (c) " Upon information received"

facie case has been made out, the High Court will not interfere with the Magistrate's action under S. 190 (c). (Stephen and Holmwood, JJ.) Rash Behary Lal Mandal v. Emperor.

35 C 1076 : 12 CWN 1075 : 8 Cr LJ 235.

——Ss. 190 and 191—Transfer — Cognizance on information derived from a police report.

Where a Magistrate, after perusing a police report and making further enquiry took cognizance of an offence not in respect of the persons against whom it was recommended that proceedings should not be taken but against another person who was concerned with the offence. Held, that the Magistrate had not taken cognizance of the case on his own information within the meaning of S. 190 (c) of the Code, so as to render it necessary for the case to be transferred for trial to another Magistrate. (Aikman, J.) Emperor v. Dalip Singh.

AWN 1907, 93 : 5 Cr LJ 275.

——S. 190 (1) (c)— Cognizance of offence upon private information—Duty of Magistrate to record information—Magistrate interested in his capacity as Collector — Competency to issue warrants.

When a Magistrate takes cognizance of an offence on information from any person other than a police officer, under S. 190 (1) (c) of the Code, he should at least record the information on which he has acted, though it may not be obligatory upon him to disclose the sources of that information.

Where the Deputy Commissioner, as Collector and, as such, representing the Court of Wards, which was part proprietor of a bazaar, granted a lease with other co-proprietors on certain terms to one C, and, from certain information lodged to him as Collector, ordered, in his capacity as Magistrate, the issue of warrants against C and others on the ground that there was prima facie evidence of an offence under Ss. 465 and 468, I.P.C., having been committed by C with respect to the lease and that he was abetted therein by other shareholders in the bazaar:

Held that the Deputy Commissioner, as Magistrate, was not competent to act on that information and to issue the warrants, as, by such action, he was practically making himself a judge in his own case. (Brett and Stephen, JJ.) Thakur Pershad Singh v. Emperor.

10 CWN 775 : 3 Cr LJ 473.

9. Taking cognizance under cl. (c)—

(c) "Upon information received"—

(i) Information received in another capacity.

——S. 190 (1) (c)—District Registrar who is also Dt. Magistrate can take cognizance of a case coming before him as Dt. Registrar.

After a Sub Registrar refused to register a document, an appeal was made to the Dt. Registrar but that appeal was dismissed, and the Dt. Registrar who was also the Dt. Magistrate directed the

CRIMINAL P. C. (V of 1898), S. 190 — 9. Taking cognizance under cl. (c) — (c) "Upon information received" — (i) Information received, etc.

prosecution of one C, the purchaser for an offence under S. 471, Penal Code.

Held that the Dt. Registrar who was also the Dt. Magistrate was competent to take cognizance under S. 190, clause (1) sub-section (c), Criminal P. C. and to transfer the case to a subordinate Magistrate in order that a commitment inquiry might be held and there was, therefore, no defect in the jurisdiction of the Sessions Judge to try the accused. (Mullick and Bucknill, JJ.) Cheta Mahto v. Emperor.

AIR 1924 Pat 128 : 2 P 459 : 4 PLT 727 : 74 IC 536 : 24 Cr LJ 792.

——S. 190 (1) (c)—Dt. Magistrate — Cognizance of offence—Information received by him in another capacity.

S. 190 (1) (c), Cr. P. Code empowers a Dt. Magistrate to take cognizance of an offence upon information received by him in another capacity, viz., as President of the District Board. 10 CWN 775, Not foll.; 37 C 321, Ref. (Abdur Rahim and Spencer, JJ.) Sundareson In re.

AIR 1920 Mad 19 : 38 MLJ 219 : 27 MLT 123 : (1920) MWN 231 : 11 LW 355 : 55 IC 684 : 21 Cr LJ 348.

——S. 190 (1) (c)—Jurisdiction of Magistrate to act on information transmitted to him in another public capacity — Mischief by cutting trees under S. 426, Penal Code— Order of attachment —Legality— Stephen, J.—(Carnduff, J., dubitante).

A Magistrate is not competent to act under S. 190 (1) (c), Crim. Pro. Code, on any information which has been transmitted to him in another public capacity. A Magistrate, who takes cognizance of an offence of mischief by cutting timber from the forest, has no jurisdiction to attach the trees. which form the subject of the alleged offence. (10 CWN 775, Referred) (Stephen and Carnduff, JJ.) Lakhi Narayan Ghose v. Emperor.

37 C 221 : 14 CWN 589 : 11 CLJ 415 : 6 Ind Cas 276 : 11 Cr LJ 305.

——Ss. 190, 195 and 478 — False deposition before civil Judge — Judge in his capacity as District Magistrate taking cognizance under S. 190 (c) — Legality.

See ibid S. 195.

5 Cr LJ 202 (Bom).

9. Taking cognizance under cl. (c)—

(d) "Upon his own knowledge or suspicion".

——S. 190 (1) (c)— Case being tried as summons case subsequently found by Magistrate to be warrant case — Whether he can proceed further with trial—Procedure to follow thenceforward.

Section 190 (1) (c), Criminal P. C., is concerned with extra-judicial information, knowledge or suspicion and it has nothing to do with knowledge gathered by a Magistrate in open Court from the evidence of witnesses given during a trial. If a Magistrate begins a trial as a summons case and then finds that an offence triable only under war-

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rant case procedure has been committed, he is bound to apply warrant case procedure thenceforward and he is not in any way disqualified from proceeding with the trial. (Burn, J.) In re K. V. Venkata Ramanier.

AIR 1938 Mad 815 : 47 MLW 739 : 1938 MWN 589 : (1938) 2 MLJ 360 : 11 RM 385 : ILR (1938) Mad 814 : 177 IC 814 : 39 Cr LJ 958.

——The petitioner filed an application before the Sub-Divisional Magistrate making certain allegations and asking for an order against the opposite party under S. 144, Criminal P. C. The Magistrate sent the petition to the Police for report, on receipt of which he wrote a long order concluding: 'I come accordingly to the finding that the petitioner's information is false, and I direct that he give bail of Rs. 200 to answer a charge under S. 182, Penal Code before the Second Officer.' The Second Officer proceeded to try the petitioner and convicted and sentenced him:

Held, that in view of S. 195 (1) (a), Criminal P. C., cognizance could only be taken on the complaint in writing of the Sub-Divisional Magistrate and cognizance by that Magistrate under S. 190 (1) (c) upon his own knowledge of suspicion that an offence had been committed would not be sufficient in law.

Held, further that the case was not one to which S. 190 (1) (c), Criminal P. C., could be applicable in view of the special provisions of S. 195 (1) (a). (Macpherson, J.) Mosafir Singh v. Emperor.

AIR 1935 Pat 356 : 1 BR 599 : 7 RP 713 : 16 PLT 440 : 156 IC 310 : 36 Cr LJ 904.

——"Upon his own knowledge" does not include knowledge gained from a police report. 14 Cal 707, Expl. (Wort, J.) Lalbihari Singh v. Emperor.

AIR 1929 Pat 514 : 10 PLT 601 : 1929 Cr C 274 : 120 IC 297 : 31 Cr LJ 55.

——Anonymous letter.

Even if the knowledge or suspicion about the commission of an offence was based on an anonymous letter, that will be sufficient to entitle the Magistrate to take cognizance provided there was no bar to the taking of such cognizance. But the complaint has to be of an offence of which the Magistrate has authority to take cognizance. (Dalal, J.) Bhairon Prasad v. Emperor.

AIR 1928 All 756 : 9 LRA Cr 140 : 10 AI Cr R 450 : 113 IC 78 : 30 Cr LJ 62 : 1929 ALJ 57 : 51 All 377.

——What amounts to.

The mere fact that previous to the making of the written complaint the Magistrate happened to be in the village and the complainant related the story of the offence to him orally and he inspected the locality, would not bring the case within the purview of sub-clause (c) of the section, and if the same Magistrate starts the proceedings on the written complaint, the case would fall under

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S. 190(1)(a) and S. 191 would not apply. (Banerji, J.) Sal Deo v. King-Emperor.

AIR 1927 All 101 : 7 LRA Cr 191 : 27 Cr LJ 1406 : 98 IC 718.

——Accused to be informed.

Where a magistrate takes cognizance of a case neither upon a complaint nor upon a police report, he must be deemed to have taken cognizance of it upon his own knowledge or suspicion, and in that case it is his duty to inform the accused that he is entitled to have his case tried by another Court. (Sulaiman, J.) Narain Das v. Emperor.

AIR 1926 All 325 : 92 IC 741 : 27 Cr LJ 325 : 7 LRA Cr 38.

——Procedure.

A Magistrate is not precluded from trying a case of which he has taken cognizance on his own knowledge under S. 190(c) provided he has complied with the provisions of S. 191. In such a case S. 556 ceases to operate. (Heald, J.) Nga Chit Kyau v. Emperor.

AIR 1924 Rang 352 : 84 IC 249 : 3 Bur LJ 121 : 26 Cr LJ 249.

——Ss. 190 (1) (c) and 191 — Magistrate acting on his own knowledge of facts — Failure to inform accused — Effect.

Failure on the part of a Magistrate to inform the accused that he is entitled to be tried by another court in cases where he acts on his own knowledge of facts, is a defect which invalidates the proceedings. (Twomey, J.) Madar Sahib v. Emperor.

13 Cr LJ 52 : 4 BurLT 259 : 13 IC 388.

——Ss. 190 and 191 — Scope.

A cantonment Magistrate when he himself institutes the prosecution should inform the accused that he is entitled to be tried by another Magistrate. A failure to so inform is an irregularity. (Aikman, J.) Mohib Ali v. King-Emperor.

3 All LJ 694 : 1906 All WN 303 : 4 Cr LJ 374.

——Ss. 190(1)(c), 191, 260 and 537 — Prevention of Cruelty to Animals Act XI of 1890, S. 5 — Summary trial — No complaint — Observation.

The petitioner was convicted of an offence under S. 6 of Act XI of 1890, after a summary trial. There was no complaint against the petitioner. The conviction was based on the Magistrate's own observation of the condition of a certain horse belonging to the petitioner and on no evidence. Held, that the conviction was illegal. The omission to follow the procedure prescribed by S. 190(1)(c) and S. 191 and the omission to hear evidence, were both irregularities, which could not be cured by S. 537. (Kensington, J.) Kanhaya Lall v. King-Emperor.

31 PLR 1905 : 2 Cr LJ 187.

——Ss. 190, 191, 556 — Magistrate acting on his own knowledge.

The cantonment Magistrate warned the accused that he must not tie his buffaloes up in a certain

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spot in Cantonment. But the accused persisted. The Magistrate going out one morning found the spot in a filthy state owing to accused's persistence. On this he fined the accused.

Held that the Magistrate took no independent evidence but proceeded simply on his own inspection. From this he was clearly debarred by Ss. 190, 191 from trying the case without first taking action under S. 191. The mere fact that a Cantonment Magistrate has himself inspected a spot would not of itself debar him from trying a charge and acting on independent evidence but he cannot act merely on his own knowledge of the offence. His action in this case was clearly illegal. (Mr. Justice Robertson) King Emperor v. Abdul Rahim.

2 Cr LJ 45 (Lah).

10. Who can take cognizance.

——Ss. 190, 192, 528 (2) and 529 (e) — Improper cognizance — Transfer during trial.

The proceedings in the Court of a third class Magistrate in respect of a case of which the Magistrate was not competent to take cognisance cannot be held to have been erroneously 'bona fide', as contemplated by clause (e) of S. 529 before the completion of enquiry and trial. The District Magistrate, who came to know of the improper cognisance could not by transfer during trial to another Magistrate make the proceedings in the latter Court "erroneous and bona fide". The District Magistrate who had no 'case' before him had no authority to transfer the case. He could not also invoke the powers under S. 192. (Bannerji J. C.) Maghu v. Rattan Singh.

AIR 1950 Him. Pra. 42.

——Court having jurisdiction to try offence — It is immaterial how case comes before it.

Where a Court has jurisdiction to try an offence it is, as a rule, immaterial whether it has taken cognizance of the offence without being empowered to do so or whether the case has been transferred to it by another Court which was not empowered to make the order of transfer. (Agarwala, Shearer and Sinha, JJ.) Jhakar Ahir v. Province of Bihar.

AIR 1945 Pat 98 : 11 B R 249 : 46 Cr LJ 399 : 18 RP 1 : 26 PLT 120 : 218 IC 122 (FB).

——Power to try, whether includes power to commit — Powers, whether personal.

The power of taking cognizance may be conferred by the Local Govt., or a District Magistrate, and once given, remains personal to the Magistrate and independent of the local area where he may be exercising it, until withdrawn by the authority conferring the magisterial powers.

The omission to mention the power to commit while naming the power to try does not limit the Special Magistrate to the exercise of the latter power only. (S. S. Patkar Actg. C. J. and Murphy J.) K. R. Bhat v. Emperor.

AIR 1931 Bom 517 : 33 Bom LR 1192 : 33 Cr LJ 68 : Ind Rul (1932) Bom 14 : 134 IC 1230.

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——Where the Township and Sub-Divisional Officers enquire into certain unauthorised horse races and submit the proceedings to the Deputy Commissioner who on considering the report records an order in his capacity as District Magistrate, taking cognizance of offences, the latter has jurisdiction to take cognizance of offences, in the manner he did. 43 Mad 709, Rel. on; 37 Cal 221 Cons. (Carr, J.) Emperor v. Nga Po Win.

AIR 1930 Rang 253 : 125 IC 360 : 8 Rang 246 : 1930 Cr C 906 : 31 Cr LJ 867.

——Good faith necessary.

The law requires that the Magistrate, who takes cognizance of a non-cognizable offence under S. 190, sub-S. (1), cl. (a) or cl. (b) without having jurisdiction, should only act in good faith, though erroneously, to make his proceedings valid. AIR 1926 Mad 865 (FB); AIR 1924 Cal 614, Foll.; 32 Mad 3; AIR 1925 Mad 672; 1 PLT 73; 11 ALJ 331; 26 Bom 150, Dist. (Fforde and Agha Haider, JJ.) Emperor v. Walli Mahomed.

AIR 1928 Lah 66 : 106 IC 577 : 9 AI Cr R 317 : 29 Cr LJ 65.

——A Magistrate of the 2nd class cannot take cognizance of a complaint that certain persons were guilty of murder. Where therefore he does entertain such a complaint and finding it to be false takes action under S. 190, though defect in conviction could be cured by S. 529, complainant cannot be prosecuted for false complaint. The powers of a 2nd class Magistrate can be extended only to the extent specified in S. 37 and Sch. 4 which provisions are to be read with S. 190 in such cases. (Ross and Kulwant Sahay, JJ.) Bengali Gope v. Emperor.

AIR 1926 Pat 400 : 5 Pat 447 : 7 PLT 335 : 94 IC 896 : 27 Cr LJ 704.

——After a Sub-Registrar refused to register a document, an appeal was made to the Dt. Registrar but that appeal was dismissed, and the Dt. Registrar who was also the Dt. Magistrate directed the prosecution of one C the purchaser for an offence under S. 471, Penal Code.

Held, that the Dt. Registrar who was also the Dt. Magistrate was competent to take cognizance under S. 190, cl. (1), sub-section (c) Cr. P. Code, and to transfer the case to a Subordinate Magistrate in order that a commitment inquiry might be held and there was therefore, no defect in the jurisdiction of the Sessions Judge to try the accused. (Mullick and Bucknill, JJ.) Cheta Mahto v. King-Emperor.

AIR 1924 Pat 128 : 74 IC 536 : 89 IC 1050 : 2 Pat 459 : 4 PLT 727 : 26 Cr LJ 1482 : 24 Cr LJ 792.

——S. 190 (1) (a)—Offence under S. 20 of the Cattle Trespass Act—Cognizance by Magistrate.

A Magistrate authorised under S. 190, Cr. P. Code to take cognizance of offences upon receiving complaints, can take cognizance of an offence under S. 20 of the Cattle Trespass Act, 1870 though there is no special authorization in that

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behalf. (Shah and Hayward, JJ.) Emperor v. Viswanath Vishnu Joshi.

AIR 1920 Bom 85 (1) : 44 Bom 42 : 21 Bom LR 1084 : 54 IC 495 : 21 Cr LJ 95.

——S. 190 (1) (c) — Taking cognizance — Bom. Prev. of Gambling Act, S. 6.

A Magistrate not empowered to take action under S. 190 (1) (c), Cr. P. C., cannot, by merely issuing a warrant under the Bom. Prev. of Gambling Act, S. 6 be said to have taken cognizance of a case. (Hayward, J. C. and Boyd, A. J. C.) Hotu v. Emperor.

AIR 1914 Sind 121 : 8 SLR 66 : 25 IC 985 : 15 Cr LJ 657.

——Ss. 190 (1) (a) and (2), 529 (e), 530 (k) and 531—Complaint before — Offences under Penal Code and Explosives Act —Govt. sanction—Complaint before another Magistrate with sanction—Cognizance.

A complaint was made to a Sub-Divisional Magistrate of the offence of making preparation to commit dacoity, under S. 399, I. P. C. The facts in the complaint also showed that the accused was also guilty of having bombs in his possession or control, for cognizance of which latter offence Govt. sanction was necessary under the Explosives Act. Subsequently the Supt. of Police obtained the sanction and put in a complaint before the Dt. Magistrate who thereupon proceeded with the case. Held, that the Dt. Magistrate has jurisdiction to take cognizance of the offence which was not and could not be taken cognizance of, by the Sub-Div. Magistrate for want of Govt. sanction and there was no necessity of formally withdrawing the case from the Sub-Divisional Magistrate's file. 27 C 798 ; 27 C. 979 ; 30 C. 449 : 37 C. 412, Dist. (Casperze and Sharfuddin, JJ.) Lalit Chandra v. Emperor.

39 Cal 119 : 15 IC 65 : 13 Cr LJ 433.

——S. 190 (1) (c) — Magistrate not empowered to take cognizance under — Powers.

Where a remark was added to a Police report sent under S. 173 that one A has instigated the commission of the theft, and the court is at liberty to take action against A, Held the Magistrate could not issue a warrant against A as he was not empowered to take action under S. 190 (1) (c). (Pratt, J. C. and Crouch, A. J. C.) Ahmed Khan v. Emperor.

5 SLR 1 : 9 IC 492 : 12 Cr LJ 92.

——S. 190 (1) (a) —Civil and Military Station Banglore.

The Dt. Magistrate of the Civil and Military Station has jurisdiction to take cognizance of and try offences committed by European Br. subjects in accordance with provisions of the Code. (White, C. J., Munro and Sankaran Nair, JJ.) Lawrence W. B. In re.

34 Mad 346 : 9 MLT 322 : (1911) 2 MWN 199 : 9 IC 255 : 12 Cr LJ 42.

CRIMINAL P. C. (V of 1898), S. 190 — 10. Who can take cognizance

——Sessions Judge if a Magistrate empowered under S. 190.

See ibid, S. 156.

11 Cr LJ 330 (Lah).

——S. 190 (c) — Issue of warrant for arrest by Magistrate not empowered under.

Obiter:— In the absence of a complaint, and on the information contained in a telegram from a would-be complainant, a Magistrate not specially empowered under S. 190 (c) cannot issue a warrant for the arrest of a person. (Wallis and Pinhey, JJ.) Swaminathan Chettiar v. Annamalai Chettiar.

1 IC 796 : 4 MLT 481 : 9 Cr LJ 92.

——An Assistant Collector being of opinion that the petitioner — plaintiff in a rent suit — had told a lie, submitted the record of the case to the Collector with the request that proceedings under S. 193, Penal Code, be taken against him. Accordingly on receipt of the proceedings the Collector directed initiation of proceedings.

Held, that though the Assistant Collector's order could not be regarded as an order under S. 476, Criminal P. C., the Collector also being the District Magistrate had power as Magistrate to take the action as he did.

See ibid, S. 4.

1 Cr LJ 335 (All).

—S. 191.

See also ibid, S. 190.

SYNOPSIS.

1. Scope and applicability.
(a) Appeals.
2. Nature of accused's right.
3. Effect of non-compliance.

1. Scope and applicability.

——Police report mentioning only fact of assault and not murder — Special Judge framing charges under S. 323, I. P. C., in addition to charge under S. 302 — Action amounts to taking cognizance of offence under S. 323, Penal Code, under S. 190 (1) (a) and not under S. 190 (1) (c) — S. 191 has no application.

See ibid, S. 190.

1948 Bur LR 179.

——When a Magistrate takes cognizance of an offence under S. 190, he gets seisin of the whole case and he can bring everybody concerned in the commission of the offence, as accused. Where during the trial of a person the Magistrate detains another person who is present in the Court and makes him co-accused, S. 351 applies and not S. 190 (c) and S. 191 is not a bar to the jurisdiction of the Magistrate to try such person. (Ba U, J.) Maung Thet v. Maung Chit Kywe.

AIR 1941 Rang 30 : 1940 Rang LR 676 : 13 R Rang 168 : 191 IC 894 : 42 Cr LJ 244.

CRIMINAL P. C. (V of 1898), S. 191 — 1. Scope and applicability

——The mere fact that previous to the making of the written complaint the Magistrate happened to be in the village and the complainant related the story of the offence to him orally and he inspected the locality, would not bring the case within the purview of sub-cl. (c) of the section, and if the same magistrate starts the proceedings on the written complaint, the case would fall under S. 190 (1) (a) and S. 191 would not apply. (Banerji, J.) Baldeo v. King-Emperor.

AIR 1927 All 101 : 98 IC 718 : 7 LRA Cr 191 : 27 Cr LJ 1406.

——A Magistrate is not precluded from trying a case of which he has taken cognizance on his own knowledge under S. 190 (c) provided he has complied with the provisions of S. 191. In such a case S. 556 ceases to operate. (Heald, J.) Nga Chit Kyaw v. King-Emperor.

AIR 1924 Rang 352 : 84 IC 249 : 3 Bur LJ 121 : 26 Cr LJ 249.

——Accused ordered to be challaned on report by police under S. 62 — Magistrate if should act under S. 191 before trying case himself.

See ibid S. 62.

11 Cr LJ 150 (Lah).

——Strict observance of S. 191 necessary for taking cognizance of offence under S. 190 (1) (c).

See Criminal Procedure Code (Act V of 1898) S. 190.

10 Cr LJ 303 (Nag).

——Order for commitment — Failure to exercise judicial discretion.

A Magistrate, in deciding whether he should, under S. 191, Crim. Pro. Code, commit the case to the Court of Sessions or transfer it to another Magistrate for trial, should exercise a judicial discretion. His decision will depend chiefly upon the question whether the punishment, which a Magistrate is competent to inflict in case of a conviction will be adequate or not. Where a Magistrate gives no such reasons for the commitment, but merely states that the pleader for the complainant wished the case to be committed, the Magistrate fails to exercise any judicial discretion at all when ordering the commitment, and the commitment is, therefore, liable to be quashed. (Pratt, J. C.) Crown v. Tarumal.

2 SLR 9, Cr : 10 Cr LJ 224.

——Applicability — Complaint to Magistrate falling within S. 4 (h) — Magistrate acting on it acts under Cl. (a) of S. 190 — S. 191 has no application to case.

See ibid, S. 4 (1) (h).

10 Cr LJ 18 (All).

—Information or complaint regarding grave offence such as dacoity given to village headman — Village headman is bound to forward the information or complaint to both Police and the Magistrate and hence the Criminal Law is set in motion as effectually as if the informant had himself given the information to the police under S. 154 or the complaint to the Magistrate under S. 191 Criminal P. C.

CRIMINAL P. C. (V of 1898), S. 191 — 1. Scope and applicability

See Penal Code S. 211.

9 Cr LJ 170 (Mad).

——Ss. 190 (1) (c) and 191 — Application for transfer from file of Magistrate who had taken cognizance under S. 190 (1) (c).

After the institution of a complaint, the names of some more accused persons, which were not in the original complaint, were added after the institution of the complaint by the Public Prosecutor under instructions from the District Magistrate. The accused did not at all appear before the Magistrate. Held, (i) that the case against the newly added accused was taken cognizance of by the District Magistrate under S. 190 (1) (c), and that S. 191 applied to the case. (ii) that the Magistrate could not act under S. 191, for transferring it to some other Magistrate under him and that the application for transfer was premature. (iii) Neither for the above reason, nor because the District Magistrate entertained a complaint in the face of a standing order in force that all complaints should be presented to the senior Magistrate of the district, nor again because the District Magistrate appointed a Public Prosecutor to conduct the case, could it be held that he had prejudged it, so as to entitle a party to claim its transfer to a Court outside the district. (Irwin, J.) Maung Shwe Hla v. Crown.

14 Bur LR 327 : 9 Cr LJ 64.

——Ss. 190 and 191— Cognizance on information derived from police report — Transfer not necessary under S. 191. (Aikman, J.) Emperor v. Dalip Singh.

AWN 1907, 93 : 5 Cr LJ 275.

1. Scope and applicability—

(a) Appeals.

——Magistrate taking cognizance — Power to hear appeal against conviction.

Where a Magistrate takes cognizance of a case under S. 190 (1) (c) he cannot afterwards hear an appeal from a conviction in the case without following the procedure in S. 191. (Rampini and Sharfuddin, JJ.) Bansi Lal v. Emperor.

12 CWN 438 : 7 Cr LJ 224

——Appellate Court reversing finding and sentence — Court's jurisdiction to try the offender itself in stead of ordering retrial.

See ibid S. 423.

6 Cr LJ 133 (Mad).

2. Nature of accused's right.

——Meaning of.

The expression "trial by another Court" in S. 191 means trial by Court of Session or by another Magistrate. (Dhavle, J.) Panu Samal v. Emperor.

AIR 1940 Pat 111 : 6 BR 368 : 12 RP 513 : 5 Cut LT 81 : 186 IC 435 : 41 Cr LJ 318.

CRIMINAL P. C. (V of 1898), S. 191 — 2. Nature of accused's right

——S. 191, if entitles accused to be tried by Court or Magistrate of his choice.

Section 191, Criminal P. C., does not give the accused the right to be tried by a Court or Magistrate of his choice, but only makes it impossible for the Magistrate who took cognizance under subs. (1), Cl. (c) of S. 190 to try the accused except with his consent. (Dhavle, J.) Panu Samal v. Emperor.

AIR 1940 Pat 115 : 6 BR 368 : 12 RP 513 : 5 Cut LT 81 : 186 IC 435 : 41 Cr LJ 318.

——Transfer on application of accused.

S. 191 does not give any right to the accused to select or determine by which other Court his case is to be tried. All that he is entitled to is to have the case tried by another Court. The section is intended to protect a person being tried before the Magistrate who has received information under S. 190 (c) or who has acted upon his own knowledge or suspicion and to give the person charged an opportunity of being tried before another Court. (Russell and Batty, JJ.) Shrinivas Krishna Shriralkar. In re.

7 Bom LR 637 : 2 Cr LJ 582.

3. Effect of non-compliance.

——Omission to comply with terms of S. 191 — Material irregularity.

Where a Magistrate takes cognizance of a case and proceeds to try it himself without informing the accused that he was entitled to have the case tried by another Magistrate, the omission to do so is an irregularity which vitiates the trial. (Thom, J.) Sardar v. Emperor.

AIR 1934 All 693 (1) : 7RA 158 (1) : 3 AWR 471 (1) : 151 IC 357 (1) : 35 Cr LJ 1308.

——Trial is not in accordance with law if provisions of S. 191 are not complied with. (Harrison, J.) Sommun v. Emperor.

AIR 1926 Lah 627 : 96 IC 989 : 27 Cr LJ 1037.

——Trial vitiated.

Section 191 is imperative and a failure to inform the accused of his right to be tried by another Magistrate under S. 191 is not a mere irregularity which is cured under S. 537, but it vitiates the trial. 28 All. 212 and AIR 1923 All. 383, Foll. (Sulaiman, J.) Narain Das v. Emperor.

AIR 1926 All 325 : 92 IC 741 : 7 LRA Cr 38 : 27 Cr LJ 325.

——Omission to inform accused of his right to be tried by another Magistrate vitiates the trial instituted and carried on by the Magistrate under S. 476, Cr. P. Code. (Wazir Hasan, J. C) King-Emperor v. Naipal.

AIR 1924 Oudh 448 : 28 OC 1 : 82 IC 152 : 11 O LJ 532 : 25 Cr LJ 1224.

——Omission to inform accused is fatal.

Omission of the Magistrate to inform the accused before any evidence is taken, that he is entitled to have the case tried by another Court, is fatal to the legality of the trial, where the Magistrate is taking cognizance of an offence upon his own knowledge or suspicion. (Walsh, J.) Chander Sen v. Emperor.

CRIMINAL P. C. (V of 1898), S. 191 — 3. Effect of non-compliance

AIR 1923 All 383 : 21 ALJ 89 : LR 4 A Cr 11 : 73 IC 576 : 24 Cr LJ 656.

——Magistrate taking cognizance under S. 190 (C) — Magistrate acting upon report by police officer if a non-cognisable offence — Magistrate should be taken to have acted under S. 190 (1) (c) and taken up case on suspicion — Duty of Magistrate even if he had power to take cognisance in absence of complaint from party to inform accused of his right under S. 191 — Record not showing compliance — Conviction to be quashed.

See ibid, Ss. 155, 190, 191.

9 Cr LJ 331 (Mysore).

——Scope — Cantonment Magistrate instituting prosecution under Cantonment Code —Trial by the Magistrate without informing accused that he can have his case tried by another Magistrate — Irregularity vitiates trial.

See ibid. S. 190.

4 Cr LJ 374 (All).

——Ss. 190, 191, 537 — Failure of Magistrate to inform accused of his right to be tried by another Court whether curable irregularity.

A Magistrate, taking cognizance of an offence under S. 190 (c), is not competent to try the case unless and until he has informed the accused, before taking any evidence, that he is entitled to have his case tried by another Magistrate. The failure to inform the accused of his rights is not a mere irregularity, S. 537 has no application and the irregularity is not curable. (Richards, J.) Emperor v. Chedi.

28 A 212 : AWN 1905, 258 : 2 ALJ 745 : 2 Cr LJ 809.

——Trial Magistrate taking action upon his own knowledge of facts.

When a Magistrate takes action against an accused on his own knowledge of facts, he must inform the accused that he has a right to have his case tried by another Magistrate. Where without informing the accused of his right, he himself tries the case and convicts the accused, the conviction is illegal. (Chatterji, J.) Crown v. Mul Raj.

84 PLR 1905 : 36 PR 1905, Cr : 2 Cr LJ 365.

——Ss. 191, 190(1)(c), 260 and 537 — Omission to follow procedure prescribed by section—Irregularity cannot be cured by S. 537.

See ibid, Ss. 190 (1) (c), 191, 260 and 537.

2 Cr LJ 187 (Lah).

——Magistrate acting on his own knowledge — Magistrate proceeding with trial without first taking action under the section. Conviction and sentence set aside.

See ibid, Ss. 190, 191, 556.

2 Cr LJ 45 (Lah).

CRIMINAL P. C. (V of 1898), S. 191—3. Effect of non-compliance

——Objection on ground of non-compliance with section not taken in appeal before Sessions Judge — If can be urged in revision before the High Court—(semble).

See Cr. P. C., S. 190 (1) (a).
1 Cr LJ 511 (Lah).

——S. 192.

See also (1) ibid, S. 476.
(2) Cattle Trespass Act (1871), S. 20.

SYNOPSIS

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2. **Effect of transfer.**
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1. 'Case', meaning of.

——Case, meaning of — Proceedings under S. 107 can be transferred under S. 192.

See ibid, S. 107.
AIR 1953 Cal 109 : 1953 Cr LJ 344.

——S. 192 (1) — Magistrate acting under S. 133 on information received by him in other capacity — Legality — Magistrate can transfer proceedings under S. 133 even without passing preliminary order.

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AIR 1952 All 215 : 1952 Cr LJ 407.

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See ibid, S. 133.
AIR 1949 Cal 637 : 51 Cr LJ 205.

——Ss. 192, 528 — Transfer of cases under Ss. 145 and 147.

Proceedings under Ss. 145 and 147 are criminal cases and a Magistrate has power to transfer such cases under sections 192 and 528 of the Code of Criminal Procedure. (Kulwant Sahay, J.) Abdul Hamid v. Hasan Raza.
AIR 1923 Pat 366 : 4 Pat LT 297 : 1 Pat LR Cr 195 : 72 IC 951 : 24 Cr LJ 478.

——S. 192 read with S. 110 — Scope.

S. 192 applies to a proceeding under S. 110, the proceeding being a case. (Mullick and Coutts, JJ.) Hiranand Ojha v. Emperor.
AIR 1922 Pat 586 : 1 Pat 621 : 4 Pat LT 44 : 71 IC 79 : 24 Cr LJ 31.

——S. 192 and S. 145 — Transfer.

Proceedings under S. 145 can be transferred. (Ryves, J.) Mahendra Singh v. Mt. Rajpatti.
AIR 1922 All 99 : 20 ALJ 215 : 65 IC 861 : 23 Cr LJ 205.

CRIMINAL P. C. (V of 1898), S. 192—1. "Case", meaning of

——Power to transfer case under S. 110.

See Criminal P. C. Ss. 110, 192, 529.
7 Cr LJ 146 (Cal).

——Offence under S. 20, Cattle Trespass Act — Power of magistrate to transfer case to magistrate subordinate to himself.

See Cattle Trespass Act (I of 1871), Ss. 20-23.
6 Cr LJ 363 (Cal).

——Proceedings under S. 145 — Transfer of by District Magistrate. See ibid S. 145.
4 Cr LJ 223 (Cal).

——Power of District Magistrate to transfer enquiry — The order of the District Magistrate transferring the enquiry initiated by him under S. 110 of the Code to the Sub-Divisional Magistrate is not illegal. (Thirkell White C. J. and Fox J.) Ebrahim v. King-Emperor.
2 LBR 80.

2. Effect of transfer.

——S. 192 — Effect of transfer under S. 192.

The transfer of case provided in S. 192 means the transfer of the judicial investigation into any offence and not merely with reference to some of the accused concerned in offence.

When as a result of investigation of an offence by the Police a challan has been put up by the Police before a particular Magistrate, then, any further or supplementary challan, if one can be put up, has to be put up before the same Magistrate before whom the former challan had been put up or before the Magistrate who took cognizance of the case on transfer to him and not before any other Magistrate. (Gupta J.) Hanuman v. Raj.
AIR 1951 Raj 131 : 52 Cr LJ 964.

——Transferee Court, powers of — Transfer before issue of process.

It is well settled that when a case is transferred to a subordinate Magistrate under S. 192(1) the latter has the same authority to deal with the case as regards issuing of process and other matters connected with the inquiry or trial as is vested in the superior Magistrate from whom he receives the case on transfer. The transfer may be made as soon as the transferring Magistrate has taken cognizance of the case; he need not wait for the stage when the accused person appears as a result of the issue of the process. (Das J.) Dalu Gour v. Moneswar Mahto.
AIR 1948 Pat 25 : 229 IC 262 : 13 BR 360 : 48 Cr LJ 347.

——Cognizance of case properly taken by transferring Magistrate — Transferee Magistrate can summon any further persons as accused if he finds evidence against them. (Meredith and Bennet JJ.) Province of Bihar v. Bhim Bera.
AIR 1947 Pat 284 : 25 Pat 539.

——S. 192(1) — Case transferred under S. 192(1) — Magistrate to whom it is transferred, powers

CRIMINAL P. C. (V of 1898), S. 192 — 2. Effect of transfer of — Duty and power of transferee Magistrate — Transferring Magistrate, powers of, issuing order connected with case, under S. 528 or Chap. XXXII.

When a case has been transferred to a Magistrate under S. 192 (1), Criminal P. C., that Magistrate has the same authority to deal with the case which has been transferred to him, as regards the issuing of processes and other matters connected with the inquiry or trial, as is vested in the superior Magistrate from whom he received the case on transfer . When once a case has been validly transferred to a Subordinate Magistrate under S. 192(1) of the Code, such a Magistrate has no authority to return the case to the transferring Magistrate in order that the latter might issue process under S. 204 and his duty is to complete the trial according to law. The superior Magistrate has no jurisdiction to issue any orders connected with the case except such as are contemplated under the provisions of S. 528 or Chap. XXXII of the Code. (Edgley J.) Hafizar Rahman v. Aminal Haque.

AIR 1941 Cal 185 : 72 CLJ 104 : ILR (1941) 1 Cal 67 : 44 CWN 1114 : 13 RC 476 : 194 IC 38 : 42 Cr LJ 490.

——Ss. 192 (1), 204 — Magistrate summoning only one accused — Transfer of case under S. 192(1) — Death of aforesaid accused subsequently — Proceedings in case against others, if terminated.

Where a Magistrate summons only one of the accused persons mentioned in the complaint and transfers the case under S. 192 (1), the death of the aforesaid accused subsequent to the transfer does not terminate the proceedings in the case against the other accused persons unless the Magistrate to whom the case is transferred thinks fit to conclude proceedings against him. (Edgley J.) Hafizar Rahman v. Aminal Haque.

AIR 1941 Cal 185 : 72 CLJ 104 : ILR (1941) 1 Cal 67 : 44 CWN 1114 : 13 RC 476 : 194 IC 38 : 42 Cr LJ 490.

——S. 192 (1) — 'Case of which he has taken cognizance' in S. 192 (1) — Meaning of.

Where a Sub-Divisional Magistrate, having taken cognizance of an offence on a charge-sheet submitted by the Police, has made over to a Subordinate Magistrate the charge-sheet and the accused forwarded by the Police in custody or bail, with an order that the transfer is "for disposal", he has made over the judicial investigation into the offence and not merely the judicial investigation into the offence so far as regards the particular accused. (Macpherson and Agarwala, JJ.) Deonarain Singh v. Emperor.

AIR 1933 Pat 244 : 14 PLT 176 : 12 Pat 341 : 6 RP 384 : 147 IC 913 : 35 Cr LJ 533.

——A Magistrate to whom a case is transferred by the District Magistrate under the provisions of S. 192 stands in the shoes of the original Magistrate and he has full authority to deal with the case as if he himself had taken cognizance of it. (Chotzner and Gregory, JJ.) Hemendra Nath Sen v. Emperor.

AIR 1929 Cal 192 : 55 Cal 1274 : 114 IC 800 : 30 Cr LJ 352.

——Powers.

If the Sub-Divisional Magistrate, acting under S. 192 (1) transfers a case of which he has taken cognizance before issue of summons, the Magistrate who receives the case on transfer has power to do all that is requisite to try and decide the case, including power to issue summons on the accused. He has the same power where the High Court directs transfer of the case from the file of the Sub-divisional Magistrate and the case is transferred to his file in accordance with that direction. (Macpherson, J.) Raja Madhu Sudan Dev v. Panu Pardhi.

AIR 1926 Pat 358 : 7 PLT 420 : 95 IC 935 : 27 Cr LJ 855.

——Powers.

On a complaint being filed before the Sub-Divisional Officer, the complainant was examined and Police was ordered to submit a report. The police submitted a final report stating that the case was maliciously false and filed a complaint for the prosecution of the complainant under S. 211 of the Indian Penal Code. The Sub-Divisional Officer did not take cognizance of the case under S. 211 but merely asked the accused to show cause why he should not be prosecuted. At the same time the complainant put in a petition impugning the police report and praying for an enquiry by a Judicial Officer. The complainant was directed to adduce evidence. His witnesses, however, were not present on the day fixed and he prayed for time. The case was thereupon adjourned, but on the adjournment date the following order was passed:"Witnesses were present. To Mr. Q. (a Deputy Magistrate) for disposal" Mr. Q. did not examine any of the witnesses being of opinion that it would be a waste of time to do so. But on looking into the police report and hearing the pleader of the complainant he directed the investigating Officer to submit a charge-sheet in the case. Subsequently the Sub-Divisional Officer purported to re-call the case from the file of the Deputy Magistrate and make it over to another Deputy Magistrate with certain instructions as to how he should proceed.

Held, the order transferring the case to the Deputy Magistrate was under S. 192 and the whole case was transferred. The Deputy Magistrate had full seisin of the case and Sub-Divisional Officer could not re-call the case for the reasons shown in his order or transfer it to another Deputy Magistrate, much less with instructions as to how he should deal with the case. The order of the Sub-Divisional Officer transferring the case to another Magistrate as well as the order of the Deputy Magistrate asking for

CRIMINAL P. C. (V of 1898), S. 192—2. Effect of transfer

a charge-sheet from the police should be set aside. (Sen, J.) Mahari Dhangar v. Baldeo Narain.

AIR 1926 Pat 525 : 7 PLT 530: 1926 PHCC 16 : 90 IC 657 : 26 Cr LJ 1585.

——Ss. 192 and 202 — Transfer by Dt. Magistrate to his own file — Complaint sent for enquiry to Subordinate Courts — Case of civil nature.

Under S. 192, a transferring Magistrate cannot intermeddle with a case transferred unless and until, having power to do so, he recalls it to his own file. The practice to refer complaints to Subordinate Magistrate for local inquiry and report is in conformity with the provisions of S. 202 of the Code. Where a Dt. Magistrate, after receipt of the report by a Sub-Divisional Magistrate from a sub-Magistrate under S. 202, transferred the case to his own file with a view to inform himself of the disputes between the parties. Held, the reason for the transfer was inadequate. The practice of taking to the criminal courts for the purpose of preliminary skirmish, disputed claims involving question of rights and title, about which the parties may intelligibly and with perfect good faith, take opposing views, deprecated. (Richardson and Huda, JJ.) Amrit Majhi v. Emperor.

AIR 1919 Cal 59 : 46 Cal 854 : 23 CWN 623 : 29 CLJ 322 : 51 IC 668: 20 Cr LJ 508.

——Effect of order of Dt Magistrate under S. 192.

An order by a Dt Magistrate under S. 192 does not import a decision of any question either of law or fact arising in the case. (Pratt, J. C., and Hayward, A. J. C.) Imperator v. Chellaram Naraindas.

6 SLR 260 : 19 IC 954 : 14 Cr LJ 298.

——Ss. 192, 204 and 528 — Transfer of case to Subordinate Magistrate — Refusal to issue process by such Magistrate — Issue of process of transferring magistrate — Legality — The police sent up a report in B form to the Joint Magistrate against certain persons. Subsequently on the order of the Joint Magistrate, the police sent up report on an A form against some of them. The Joint magistrate transferred the case for disposal to the Deputy Magistrate. The Deputy Magistrate convicted the latter class of persons. An application for processes against the remaining persons mentioned in the original B form was refused as unnecessary. Subsequently the Joint Magistrate ordered the issue of processes against these persons. Held, that the order of the Joint magistrate issuing process was without jurisdiction. Per Henderson, J.—The order made by the Deputy Magistrate refusing to issue processes as unnecessary amounted to a discharge. The order of the Joint Magistrate making over the case to the Deputy Magistrate without any reservation, was an order making over the whole case mentioned in the original Police report. Until the Joint Magistrate had withdrawn the case so made over from the file of the Deputy Magistrate to that of his own Court, he had no power to make any order save an order for further enquiry under

CRIMINAL P. C. (V of 1898), S. 192—2. Effect of transfer

S. 437. (Henderson and Geidt JJ.) Ajab Lal Khirher v. Emperor.

32 C 783 : 9 CWN 810 : 2 Cr LJ 524.

3. Erroneous transfer.

——Ss. 192, 529 — Transfer under S. 192 by Magistrate not taking cognizance, bona fide but not erroneous — Subsequent proceedings by transferee Magistrate are without jurisdiction.

A First Class Magistrate dealing with general file, cannot transfer a case of which cognizance is taken by another Magistrate, who is absent on the date of hearing, to his own file under S. 192. Jurisdiction to transfer is founded upon the transferring Magistrate's taking cognizance of the case.

But under S. 529 want of jurisdiction to transfer a case under S. 192, by reason of the transferring Magistrate not having taken cognizance of the case, would not render invalid the subsequent proceedings before the transferee Magistrate, provided it is shown that the transfer concerned was made erroneously and in good faith.

But where the transfer is bona fide but not erroneous in that the Magistrate was aware of the requirements of S. 192, both the transfer and the subsequent proceedings are without jurisdiction and not curable under S. 529. (Mitter and Sen JJ.) Khudiram Ghosh v. State.

AIR 1953 Cal 573 : 57 Cal WN 512 : 1953 Cr LJ 1355.

——Case triable by First Class Magistrate —Transfer to Second Class Magistrate with direction to commit to Sessions — Legality.

A First Class Magistrate transferred a case triable by himself to a second class Magistrate subordinate to him with direction to treat the case as one for committal to the Sessions:

Held, that the First Class Magistrate had no power to do so and that the proper procedure to be followed by him was, if he thought that the case should be committed to the Sessions, to himself commit the case to the Court of Session under S. 347. (Pandrang Row, J.) In re Ramasubbayya.

AIR 1938 Mad 529 : 11 RM 45 : (1938) 1 MLJ 403 : 47 LW 486 : 1938 MWN 417 : 176 IC 182 : 39 Cr LJ 715.

——District Magistrate appointing Sub-Divisional Magistrate for particular period — Authority to be in charge of S. D. O.'s file during his tour —Such appointed Magistrate, not empowered under S. 192, transferring case in good faith to his own file:

Held, that the transfer is valid by virtue of S. 529 (f). (Guha and Biswas, JJ.) Ram Krishna Sinha v. Emperor.

AIR 1938 Cal 195 : 42 CWN 246 : 10 RC 693 : 174 IC 513 : 39 Cr LJ 417.

——Limit of power.

Application was made to the District Magistrate praying for action to be taken under S. 145 of

CRIMINAL P. C. (V of 1898), S. 192—3. Erroneous transfer

the Code. The District Magistrate took the petition on file and without himself taking action under S. 145 (1) transferred it to a Sub-Divisional Magistrate under him for disposal. Sub-Divisional Magistrate made an order under S. 145 (1). But the land concerned was not within the local limits of his jurisdiction.

Held, that the District Magistrate was wrong in transferring the case to a Sub-Divisional Magistrate who had no jurisdiction over the land concerned. The District Magistrate had no power to alter the boundaries of any sub-division of his District permanently, temporarily, or for the purpose of any particular case. The Sub-Divisional Magistrate's order therefore was without jurisdiction. 26 Mad. 188 and 22 Cal. 898, Dist.; 41 Mad. 246, Appr. (Reilly, J.) Chellapathi Naidu v. Subba Naidu.

AIR 1928 Mad 1230 : 114 IC 625 : 28 MLW 664 : 1928 MWN 921 : 1 M Cr C 320 : 52 Mad 241 : 55 MLJ 693 : 30 Cr LJ 340.

——Ss. 192 (2) and 145 — Transfer of case under S. 145 by subordinate Magistrate.

A subordinate magistrate cannot be empowered under S. 192 (2) to transfer cases under S. 145; but the defect is curable under S. 529. (Sarfuddin and Cox, JJ.) Kishori Lal Roy Choudhury v. Srinath Roy.

1 Ind Cas 817 :13 CWN 530 : 36 C 370 : 9 Cr LJ 399.

4. Notice.

——No adverse order without hearing party.

An adverse judicial order cannot be passed against a party without giving him an opportunity of being heard.

Dismissal of transfer application without giving applicant opportunity of being heard, held wrong. (C. B. Nagarkar J. C) Sri Kishen v. Ganga Ram.

1948 AM LJ 16.

——Preliminary inquiry — That Magistrate examined complainant's witnesses without notice to accused is no ground for transfer of case.

There is nothing unusual in the action of a Magistrate in examining witnesses in a preliminary inquiry without giving notice to the accused persons and the same cannot be made a ground for transfer of the case from his Court under S. 192, Criminal P. C. (Davis C. J. and Weston, J.) Emperor v. Sitaldas.

AIR 1943 Sind 109 : 16 RS 16 : ILR (1943) Kar 13: 207 IC 192 : 44 Cr LJ 612.

——To accused—Necessity.

In cases of transfer, the District Magistrate, before passing an order of transfer, should give an opportunity to the accused to show cause why transfer should not be made. (Devadoss, J.) Ramalinga Odayar v. Emperor.

AIR 1928 Mad 560 : 51 Mad 610 : 28 MLW 303 : 1 M Cr C 143 : 110 IC 590 : 55 MLJ 217 : 29 Cr LJ 734.

CRIMINAL P. C. (V of 1898), S. 192

5. Piecemeal transfer.

See also Criminal P. C. S. 190.

——S. 192 (1) — Piecemeal transfer of case under S. 192 — Legality.

The legality of the piecemeal transfer of a case under S. 192 (1), Criminal P. C., is doubtful. Even if such piecemeal transfer is in certain circumstances valid, that portion of the case which has not been transferred must be clearly indicated in the order of transfer recorded by the transferring Magistrate who acts under S. 192, Criminal P. C. In the absence of a clear indication as to which part of the case is retained on the file of the transferring Magistrate or some further indication to the effect that such Magistrate intended to dismiss the complaint against those accused persons in respect of whom he did not issue process, it must be taken that the whole case had been transferred to the Subordinate Magistrate not only as against the accused persons actually summoned but against all other persons whom the Subordinate Magistrate might consider to be implicated in the offence. (Edgley, J.) Hafizar Rahman v. Aminal Haque.

AIR 1941 Cal 185 : 72 CLJ 104 : ILR (1941) 1 Cal 67 : 44 CWN 1114 : 13 RC 476 : 194 IC 38 : 42 Cr LJ 490.

6. Scope.

——S. 192 (2) — Power of District Magistrate to withdraw case — Power is not limited to cases, which have been made over by him to a subordinate Magistrate.

See Criminal P. C. (1898), S. 528 (2).

1953 Raj LW 231.

——Ss. 192 (1) and 528 (2) — Transfer of case by Sub-Divisional Magistrate to subordinate Magistrate — Transfer of latter Magistrate — Effect — Absence of formal order of withdrawal is only irregularity.

Where a proceeding under S. 145, Criminal P. C. is transferred by a Sub-divisional Magistrate to the file of another Magistrate by name, and the latter Magistrate is subsequently transferred the proceeding automatically reverts to the Sub-divisional Magistrate. There can hardly be any order of withdrawal in such a case, because S. 528 (2) speaks of withdrawing or recalling a case from a subordinate Magistrate and when the Magistrate who was dealing with a case is gone, there is obviously no one from whom it can be withdrawn. Assuming, however, that even when a Magistrate is transferred, his file remains, the Sub-Divisional Officer can certainly withdraw the case under S. 192 (1), read with S. 528 (2) and his omission to record a formal order of withdrawal is only an irregularity. (Harries, C. J., Das and S. R. Das Gupta, JJ.) Khudiram Mandal v. Jitendra Nath.

AIR 1952 Cal 639 : 56 Cal WN 659 : 1952 Cr LJ 1441 (SB).

CRIMINAL P. C. (V of 1898), S. 192 — 6. Scope

——Applicability.

Sub-section (1) of S. 192 refers to cases in which cognizance has been taken by the District Magistrate himself. Sub-section (2) empowers the District Magistrate to authorise any first Class Magistrate who has taken cognizance to transfer cases to a special Magistrate. (Wanchoo, C. J.) Mt. Jarao v. Ajudhyanath.

AIR 1952 Raj 96 : 1952 Raj LW 208 : ILR (1952) 2 Raj 41 : 1952 Cr LJ 1048.

——Scope — Order directing party to show cause under S. 133 against the conditional order before another Magistrate if an order of transfer under this section.

See ibid, S. 133.

AIR 1950 All 475 : 51 Cr LJ 1248 (2).

——Cognizance of case taken by the third class Magistrate not competent to try it — District Magistrate if can transfer it to another Magistrate competent to try it by invoking S. 192.

See ibid, S. 190.

AIR 1950 Him Pra 42.

——Scope — Proceedings drawn up under S. 147 by City Magistrate — Whether the Magistrate can order parties to appear before Additional City Magistrate.

See ibid, S. 147.

AIR 1949 All 616 : 50 Cr LJ 929.

——Section 26 of the Special Criminal Courts Ordinance (II of 1942) does not affect S. 192, Criminal P. C., because all that it provides is that no Court shall have authority to transfer any case from a 'Court' constituted under the ordinance. This section evidently applies only after a Court constituted under the Ordinance is in seisin of the case. In other words, the jurisdiction which is contemplated in this section is the jurisdiction, which is contemplated by S. 526, Criminal P. C., and does not affect the power of distributing cases with which the Sub-Divisional Officer is invested by S. 192, Criminal P. C. The transfer of a case by a Sub-Divisional Officer, who has taken cognizance of the case to a Special Magistrate under S. 192, Criminal P. C., is proper. (Fazl Ali C. J., Manohar Lall and Meredith, JJ.) Gopal Marwari v. Emperor.

AIR 1943 Pat 245 : 22 Pat 433 : 10 BR 193 : 16 RP 114 : 209 IC 482 : 45 Cr LJ 177 (SB).

——Facts of complaint exaggerated — Offence disclosed one under S. 325 and not under S. 326, I. P. C. — District Magistrate, if can transfer it from file of First Class Magistrate to that of Second Class Magistrate.

Section 192, Criminal P. C. empowered the District Magistrate to direct a Magistrate of the First Class who has taken cognizance of any case, to transfer it for enquiry to any other specified Magistrate who is competent to try the case. Where, from the facts of the case, it was clear that the complaint contained an exaggeration of facts and that the offence was one punishable

CRIMINAL P. C. (V of 1898), S. 192— 6. Scope

under S. 325, I. P. C. and not under S. 326, the District Magistrate can transfer the case to Second Class Magistrate. (Horwill, J.) Mariasoosai v. Arokiam.

AIR 1942 Mad 465 : (1942) 1 MLJ 108 : 15 RM 357 : 1942 MWN 125 : 55 LW 176 (2) : 201 IC 521 : 43 Cr LJ 743.

——S. 192 (1) — S. 192 (1) is wider than S. 190 (1) — Scope of S. 192 (1) — Matter in respect of which trial or enquiry may be held under Code — Magistrate, if can take cognizance — Magistrate when competent to transfer under S. 192 (1).

Section 192 (1) refers not merely to take cognizance of offences but to cases of which cognizance has been taken and the language used is wider in its character than that which has been employed in S. 190 (1). Therefore, cognizance can be taken by a Magistrate of any matter in respect of which an enquiry or trial may be held under the provisions of the Criminal P. C., and in taking cognizance of an offence or other cases, for example, cases under Ss. 107, 110 or 145 of the Code, a Magistrate merely takes seisin of the matter for the purpose of exercising the specific powers with which he has been vested under the Code in connection with the case in question. As soon as a Magistrate duly empowered has taken cognizance of a matter, there is a case before him which he is competent to transfer to a subordinate Magistrate under the provisions of S. 192 (1) of the Code. Although S. 192 appears in Part VI of the Code relating to proceedings in prosecutions, nevertheless it is sufficiently wide to cover cases under the Code other than criminal cases.

Consequently, the Magistrates mentioned in S. 192 (1) have power to transfer cases to Subordinate Magistrates either for the purpose of holding a trial, for example, under Chaps. XX or XXI of the Code or for enquiry, for example, under chaps. VIII , XII or XVII of the Code. (Edgley,J.) Hafizar Rahman v. Aminal Haque.

AIR 1941 Cal 185 : 13 RC 476 : 72 CLJ 104 : ILR (1941) 1 Cal 67 : 44 CWN 1114 : 194 IC 38 : 42 Cr LJ 490.

——Ss. 192 (1), 202 — Inquiry under S. 192 (1), nature of — Inquiry under S. 202, nature and scope of — Magistrate ordering enquiry under S. 202, whether transfers case.

The term "inquiry" in S. 192 (1) is used with special reference to such inquiries as are held in connection with proceedings under Chaps. VIII, XII and XVIII of the Code. The inquiry which is contemplated by S. 202, on the other hand, is merely for the limited purpose of ascertaining the truth or falsehood of a complaint in order to enable the Magistrate to decide whether an accused person should be summoned or the complaint against him should be dismissed under S. 203. The plain meaning of S. 192 (1) of the Code is that a case which is transferred to a Subordinate

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Magistrate under that section is transferred to him in order that he may complete the inquiry or trial to be held in connection with the case and take all requisite steps to that end. The holding of an inquiry under S. 202 in a suitable case is merely one of such requisite steps to be taken by a Magistrate who has taken cognizance of a case or to whom a case may have been transferred for trial under S. 192 (1). It is clear that a Magistrate who orders an inquiry under S. 202 of the Code does not transfer the case at all. Ordinarily, he merely retains the case on his own file and directs some suitable person to hold an inquiry and send the report to him. It follows, therefore, that an order for an inquiry under S. 202 of the Code cannot operate as a transfer under S. 192 (1). (Edgley, J.) Hafizar Rahman v. Aminal Haque.

AIR 1941 Cal 185 : 72 CLJ 104 : ILR (1941) 1 Cal 67 : 44 CWN 1114 : 13 RC 476 : 194 IC 38 : 42 Cr LJ 490.

——Ss. 192, 530 — Magistrate to whom case is transferred under S. 192, must be empowered to try it.

The Magistrate to whom a case is transferred under S. 192, Criminal P. C., must be empowered to try it, otherwise the trial would be void under the provisions of S. 530 of the Code. (Edgley, J.) Hafizar Rahman v. Aminal Haque.

AIR 1941 Cal 185 : 72 CLJ 104 : ILR (1942) 1 Cal 67 : 44 CWN 1114 : 13 RC 476 : 194 IC 38 : 42 Cr LJ 490.

——Case under S. 427, Penal Code (Act XLV of 1830), transferred to Third Class Magistrate — Trial by latter is without jurisdiction.

The Court's jurisdiction must be determined on the allegations made in the complaint and on the complainant's statement in support of the complaint.

If the Magistrate, to whom a case is transferred under S. 192, Criminal P. C., lacks jurisdiction to try the case, the order of transfer is bad in law. A First Class Magistrate taking cognizance of a case under S. 427, I. P. C., cannot transfer it to a Third Class Magistrate. It may be that after a trial, it is found that the case has been materially exaggerated; but unless it has been found at the very outset that the allegations are exaggerated with the intention of seeking a particular Court for redress, the statement of the complainant in a criminal case and the statement of the plaintiff in a civil case has to be accepted for the purpose of jurisdiction. Hence, the trial of the case by the Third Class Magistrate is illegal. The case is not covered by S. 537, Criminal P. C., as a question of jurisdiction is involved and a defect of jurisdiction is not curable by S. 537. (Ziaul Hasan, J.) Mathra v. Kamta.

AIR 1940 Oudh 244 : 1940 OWN 354 : 12 RO 394 : 1940 AWR 158 : 15 Luck 468 : 187 IC 553 : 41 Cr LJ 469.

CRIMINAL P. C. (V of 1898), S. 192 — 6. Scope

——Ss. 192, 202, 203 — Complaint under Ss. 420-409, Penal Code (Act XLV of 1860), before Sub-Divisional Magistrate — Evidence taken under S. 202 — Complaint transferred to Special Magistrate — Special Magistrate, if can re-examine evidence under S. 202 and dismiss the complaint.

Where, upon a complaint to the Sub-Divisional Magistrate under Ss. 420-409, I. P. C., the evidence was produced and examined under S. 202, Criminal P. C., and the Sub-Divisional Magistrate passed an order in the following terms: "Muquadma binabar faisla sipurd ba ijlas Shaikh Ashar Husain Sahab, Special Magistrate howe":

Held, that there was no doubt that the Sub-Divisional Magistrate intended to make over the case to the Special Magistrate for trial in the manner contemplated by S. 192 (1) of the Criminal P. C. (Smith, J.) Sheo Balak Singh v. Sant Buz Singh.

AIR 1937 Oudh 81 : 9 RO 166 : 1936 OWN 1079 : 12 Luck 523 : 165 IC 28 : 37 Cr LJ 1128.

——An officer of the rank of District Superintendent of Police, for certain things done by him while he was a Deputy Commissioner of Police, would be entitled to have a complaint against him tried by a Senior Magistrate, and not a Subordinate Magistrate. (Baguley, J.) J. W. Atkinson v. S. W. H. Xavier.

AIR 1936 Rang 242 : 8 R Rang 603 : 162 IC 988 : 37 Cr LJ 723.

——S. 192 (1) empowers a Magistrate to transfer a case for enquiry or trial but it does not empower him to transfer a case simply for the purpose of considering the report of an investigation under S. 202, Cr. P. Code, which he has himself ordered. (Suhrawardy and Mukherjee, JJ.) Mahabir Singh v. Giribala Dassi.

AIR 1925 Cal 742 : 87 IC 526 : 29 CWN 508 : 26 Cr LJ 990.

——Order directing enquiry and report by Honorary Magistrate — Legality.

A Magistrate who on receiving a complaint directed the police to enquire and report and being not satisfied with their report referred the case for further enquiry and report to an Honorary Magistrate. After receiving a report from the latter that the charge was not utterly devoid of foundation he issued process to the accused to answer the charge.

Held that if the Magistrate thought it necessary to refer the case to some other Magistrate for an enquiry other than local inspection he should have transferred the case under S. 192 for disposal and not for report. The order directing the Honorary Magistrate to enquire and report was not authorised by law. (Chatterjee and Teunon, JJ.) Hari Charan Gorai v. Srish Chandra Sadhukhan.

13 Cal LJ 43 : 38 Cal 68 : 7 Ind Cas 747 : 11 Cr LJ 525.

CRIMINAL P. C. (V of 1898), S. 192—6. Scope

——Transfer of case for enquiry — Offence mentioned in S. 195 Cr. P. C. in enquiry — Proceedings under S. 476 — Judicial enquiry.

See Cr. P C S. 476.

9 Cr LJ 295 (Cal).

7. 'Taken cognizance'.

——Ss. 192 (1) and 559 (1) — Transfer of case of which cognizance was taken by predecessor.

A Sub-Divisional Officer can by virtue of S. 559 (1) transfer to a Magistrate subordinate to him a case of which cognizance was taken by his predecessor. (Mitter and Sen, JJ.) Bholanath Dhar v. Gour Gopal.

AIR 1953 Cal 777 : 58 Cal WN 11 : 1953 Cr LJ 1782.

——Ss. 192 (2) and 529 (f) — Magistrate not taking cognizance of case — Transfer by — Effect.

The statutory condition which must be satisfied before any District Magistrate may empower any Magistrate of the First Class under sub-s. (2) of S. 192 is that Magistrate of the First Class must be one "who has taken cognizance of any case". It is not any and every Magistrate of First Class who can be empowered by the District Magistrate in this respect. Section 529 (f) contemplates a case where the Magistrate who is empowered is a competent Magistrate under the Code to receive the power but who in fact has not been so empowered by the District Magistrate. There the defect would be cured if the proceedings are questioned merely on the ground of his not being so empowered by the District Magistrate. Where the Magistrate has not taken cognizance of the case, this defect of jurisdiction cannot be cured by the application of S. 529 (f). (P. B. Mukharji and Guha, JJ.) Tulsibala Rakhit v. N. N. Khosal.

AIR 1953 Cal 109 : 56 Cal WN 193 : 1953 Cr LJ 344.

——S. 192 (1) — "Taken cognizance" — "Any case" — Meaning.

A case of which the Magistrate has taken cognizance in S. 192 (1) means nothing more than that the Magistrate has applied his mind to the facts of the case. The words, "any case" are not restricted to offences or criminal cases. (Wali Ullah and Wanchoo, JJ.) Moh. Ayub v. State.

AIR 1952 All 215 : ILR (1951) 2 All 609 : 1952 Cr LJ 407.

——S. 192 (1) — Section 192 (1) empowers a Sub-Divisional Magistrate to transfer any case of which he has taken cognizance for enquiry or trial to any Magistrate subordinate to him. (Dhavle, J.) N. L. Carrick v. Emperor.

AIR 1941 Pat 395 : 7 BR 681 : 22 PLT 348 : 13 RP 662 : 194 IC 94 : 42 Cr LJ 504.

——Ss. 192, 203, 350 — S. 203, scope of — Complaint — Dismissal — Application for further enquiry — Sessions Judge directing case to be sent to another Magistrate — Transfer to another Magistrate — Case, if governed by S. 350 — Evidence already recorded, if can be acted upon.

CRIMINAL P. C. (V of 1898), S. 192—7. 'Taken cognizance'

The provisions of S. 203, Criminal P. C., are very wide and this section does not say that the Magistrate dismissing the complaint must have himself recorded the evidence in the preliminary enquiry.

Where, therefore, the complainant whose complaint has been dismissed, applies for further enquiry and the Sessions Judge, while ordering the same, directs the case to be sent to another Magistrate and the District Magistrate transfers the case to another Magistrate the transfer is one under S. 192, Cr. P. C. and the case is governed by S. 203 and not by S. 350. The Magistrate has power to act upon the evidence already recorded. (Davis J. C. and Lobo, A. J. C.) Virumal Manghanmal v. Muhammad Khan.

AIR 1936 Sind 146 : 9 RS 85 : 30 SLR 217 : 164 IC 1020 : 37 Cr LJ 1086.

——Section 192 (1) authorizes certain superior Magistrates to transfer any case of which they have taken cognizance. The expression 'case of which he has taken cognizance' means nothing more than the judicial investigation into any offence of which he has taken cognizance. (Macpherson and Agarwala, JJ.) Deo Narain Singh v. Emperor.

AIR 1933 Pat 244 : 14 PLT 176 : 12 Pat 341 : 6 RP 384 : 147 IC 913 : 35 Cr LJ 533.

——Transfer.

District Magistrate taking cognizance of case on a report of his subordinate, has power to transfer the case to another Magistrate. (Sulaiman, J.) Suraj Prasad v. Emperor.

AIR 1924 All 190 : 21 ALJ 825 : 9 O and ALR 1049 : LR 4 A 248 (Cr) : 81 IC 595 : 25 Cr LJ 947.

——Cognizance by District Magistrate without complaint — Power of District Magistrate to transfer such case.

See Criminal Procedure Code Ss. 190, 192, 254.

8 Cr LJ 374 (Sind).

——Ss. 4 (1) (h), 190, 192 and 476 — Submission of record to collector for initiation of proceedings under S. 476 Cr. P. C. for offence under S. 193 Penal Code — On receipt of record collector directing initiation of proceedings — Validity.

See Criminal Procedure Code (Act V of 1898) S. 4.

1 Cr LJ 335 (All).

8. Transfer of a transferred case.

——Transfer of a transferred case — Validity.

The transfer of a transferred case is only irregular. The proceedings before the third Magistrate is not illegal. The irregularity of the transfer is cured by S. 529 (1) and the accused cannot ask for a transfer of the case to the original Court where no prejudice has been caused to him. (Misra J.) Indra Jit Singh v. Ram Pal Singh.

AIR 1951 All 371.

——Transfer of case — Cannot retransfer it again.

CRIMINAL P. C. (V of 1898), S. 192—8. Transfer of a transferred case

A Magistrate who transfers a case for trial under S. 192 of the Cr. P. Code has no power to transfer it again. (Stuart, J.) Ganga Sahai v. Jaswant.

65 IC 441 : LR 2 A (Cr) 161 : 23 Cr LJ 89 (All).

——Ss. 192 and 529 — Transfer of criminal case—Sub-Divisional Magistrate — Case already transferred.

The transfer by a Sub-Divisional Magistrate of a case under S. 192 Cr. P. Code, when the case has already been transferred to him by the Dt. Magistrate is a mere irregularity covered by S. 529 of the Code. (Coutts and Adami, JJ.) Jusuf Ali Khan v. Emperor.

AIR 1920 Pat 518 : 54 IC 496 : 21 Cr LJ 96.

——Ss. 192 and 526—Transfer—Offence on Railway lands in a Native State — Transfer by Chief Court and Dt. Magistrate.

The Chief Court has power, under S. 526, to transfer the case of an offender under S. 409, I. P. C. on Railway lands in a Native State to any court in the province, and S. 192 empowered the Dt. Magistrate to transfer the case to a Subordinate Magistrate. The two Ss. 192 and 526 were in force on Railway lands situated in the Native State and the powers conferred on the Dt. Magistrate by those sections had not been taken away by any Govt. of India Notification. (Scott-Smith and Broadway, JJ.) Kisen Singh v. Emperor.

AIR 1917 Lah 329 : 30 PR Cr 1917 : 44 PWR Cr 1917 : 41 IC 993 : 18 Cr LJ 881.

——Sub-Divisional Magistrate — Whether can transfer case referred to him for trial.

A Sub-Divisional Magistrate cannot transfer a case referred to him for trial by the Dt. Judge to another, subordinate to him. (Knox and Tudball, JJ.) Bashir Hussain v. Ali Hussain.

AIR 1914 All 150 : 36 All 166 : 12 ALJ 225 : 23 IC 1006 : 15 Cr LJ 406.

——Transfer — Transferred case.

A Magistrate can transfer only those cases of which he has taken cognizance under S. 190 of the Code but not those transferred to his Court: (Knox, J.) Dara v. Mukat.

AIR 1914 All 48 : 12 ALJ 277 : 23 IC 725 : 15 Cr LJ 357.

9. Transfer when to be made.

——Ss. 192, 202 — Enquiry — Meaning of — Transfer after stage of preliminary enquiry.

The term 'enquiry' in S. 192 is interpreted to refer to such enquiries as are held under Chaps VIII, XII and XVIII, and does not include the 'enquiry' contemplated under S. 202 the scope of which is limited to the purpose of ascertaining the truth or falsehood of a complaint, with a view to take action under S. 203. When it could be gathered from the circumstances that the action taken by thc Magistrate who transferred the case under S. 192 gives rise to the indication that the state for the preliminary enquiry under S. 202 had passed, the Magistrate to whom the case was transferred ceased to have jurisdiction for making enquiry under S. 202 and he was bound to proceed under S. 204. (Balakrishnaiya, J.) Vedantha v. Marigowda.

AIR 1951 Mys 127 : 29 Mys LJ 79 : 52 Cr LJ 1531.

——S. 192 (1) — Case partly heard — Transfer —Validity.

Where a Sub-Divisional Magistrate has examined witnesses, discharged some of the accused and framed charges against the rest, he cannot transfer the case at that stage to a subordinate Magistrate for disposal but must try it himself to the end: 35 Cr. L. J. 1055, Dissent. (Govinda Menon and Basheer Ahmed Sayeed, JJ.) Natesan Servai, In re.

AIR 1951 Mad 529 : 1950-2 MLJ 545 : 63 Mad LW 1048 : 1950 AWR (Sup) 120 : 1950 MWN 735 : 1950 MWN Cr 259 : ILR (1951) Mad 792 : 52 Cr LJ 177.

——Ss. 192 (1), 202, 204 — Transfer under S. 192 (1), as soon as accused appears or at any time thereafter when case is ready for inquiry or trial.

If Ss. 192 (1), 202 and 204 are read together it is clearly competent for the Sub-Divisional Magistrate to transfer the case as soon as the accused has appeared or at any time thereafter when the case becomes ready for the inquiry or the trial. It would be equally competent for the Sub-Divisional Magistrate to transfer the case to a Subordinate Magistrate immediately after the complainant had been examined. (Edgley, J.) Hafizar Rahman v. Aminal Haque.

AIR 1941 Cal 185 : 72 CLJ 104 : ILR (1941) 1 Cal 67 : 44 CWN 1114: 13 RC 476 : 194 IC 38 : 42 Cr LJ 490.

——A transfer of a part-heard case to be made only in circumstances of an exceptional character —Case complete except for judgment — Transfer of such case on ground that the Magistrate is overworked is irregular. (Grille, J.) In re Kisni Baxiram.

AIR 1937 Nag 103 : ILR (1937) Nag 163 : 9 RN 301 : 169 IC 96 : 38 Cr LJ 719.

——Complaint against near relation of District Magistrate.

A complaint against the District Superintendent of Police, filed before the District Magistrate, was transferred by him to the Sub-Divisional Magistrate for disposal. The accused was the relation of the District Magistrate. The acts that gave rise to the complaint occurred 10 years ago and the case, had it come up for trial, would certainly have been a cause celebre. The complainant objected to the case, being tried by the Magistrate on the ground that he himself would have to be called as witness in the trial and prayed for its transfer. Notwithstanding the objection, the Magistrate held that he could not take cognizance of the offence for want of sanction of the Local Government and discharged the accused.

Held, that the action of the Sub-Divisional Magistrate could not be said to be illegal; but, in

CRIMINAL P. C. (V of 1898), S. 192 — 9. Transfer when to be made

view of all the circumstances of the case, the matter, if it had to be put an end to, should have been put an end to in a way correct in every possible detail, and the Sub-Divisional Magistrate, in his somewhat delicate position, would have shown a better sense of the fitness of things if he had, under the circumstances, asked that some other Magistrate should deal with the case finally. ((Baguley, J.) J. W. Atkinson v. S. W. H. Xavier.

AIR 1936 Rang 242 : 8 R Rang 603 : 162 IC 688 : 37 Cr LJ 723.

——Penal Code (Act XLV of 1860), Ss. 482, 485 — Complaint to Joint Magistrate — Transfer of case to Second Class Magistrate after framing charge.

Where a Joint Magistrate to whom a private complaint of offences under Ss. 485, 486, I. P. C. was made, after hearing the prosecution witnesses, found that a prima facie case was made out only of an offence under S. 482, which was triable by a Second Class Magistrate and having framed a charge of an offence punishable under that section, transferred the case to a Second Class Magistrate:

Held, that the Joint Magistrate had power under S. 192, Criminal P. C., to transfer the case even at this stage and the action of the Magistrate in transferring the case was not illegal. (Bardswell, J.) Public Prosecutor v. Shanmugha Nadar.

AIR 1934 Mad 435 (2) : 67 MLJ 120 : 1934 MWN 521 : 39 LW 777 : 6 RM 668 : 57 M 827 : 149 IC 1155 : 35 Cr LJ 1055.

——S. 193.

——Ss. 193, 210, 226, 227 and 537 — Order of commitment without framing charge — Competency of Sessions Court to take cognizance not affected —It has power to frame charge — Irregularity.

See ibid, S. 210.

AIR 1953 All 191 : 1953 Cr LJ 478.

——Special Judge can take cognizance of case only when it is transferred to him by Chief Minister under S. 5 (1) (b) of the Hyderabad Regulation (10 of 1359 F) — Case validly transferred — Subsequent transfer by Chief Minister to Sessions Judge without order of committal — Sessions Judge has no jurisdiction.

See Hyderabad Special Tribunal (Termination) and Special Judges (Appointment) Regulation (10 of 1359), S. 5 (1) (b).

AIR 1953 Hyd 9 : 1953 Cr LJ 116.

——Applicability — S. 193 does not apply to trials under the W. B. Special Courts Ordinance where offences could be taken cognisance of without bringing accused to Sessions trial.

See West Bengal Special Courts Ordinance (III of 1949), S. 6. 54 CWN 753.

——Special Judge — Power to transfer cases — Sessions Judge taking cognizance as Special Judge cannot transfer case to another Special Judge.

CRIMINAL P. C. (V of 1898), S. 193

A Sessions Judge who as a Special Judge has taken cognizance of an offence and has gone some way towards the trial of the offence cannot transfer the proceedings to another Special Judge. The latter, in such a case, is not entitled to act on the evidence recorded by the former. Cr. Misc. App. No. 12 of 1947, Rel. on. (Ba U and E Maung, JJ.) Tun Kyi v. The King.

1947 Rang LR 495.

——Section 351, Criminal P. C. must be read subject to S. 193. (Davis C. J. and Weston, J.) Fateh Khan v. Emperor.

AIR 1942 Sind 161 : ILR (1942) Kar 323 : 15 RS 89 : 204 IC 31 : 44 Cr LJ 137.

——The effect of Ss. 9, 193 (2) and 409, Criminal P. C. is that an Additional Sessions Judge can hear all the appeals which lie to the Sessions Judge and the Sessions Judge has power to transfer any appeal he likes to the Court of the Additional Sessions Judge. (Agarwal, J.) Chandra Kumar v. Ramesh Chandra.

AIR 1942 Oudh 50 : 1941 OWN 1130 : 1941 AWR 313 : 14 RO 250 : 196 IC 664 : 43 Cr LJ 50.

——Difficult Sessions case should be tried by Sessions Judge himself.

The Sessions Judge should arrange that cases out of the ordinary routine which contain difficulty should be tried by himself and not made over to a less experienced Additional Judge. (Baguley and Mackney, JJ.) Nga Ba Din v. Emperor.

AIR 1935 Rang 406 : 8 R Rang 317 : 159 IC 1050 : 37 Cr LJ 196.

——When a statement made by an accused in a confession under S. 164, Criminal P. C. is contradicted by him both before committal and in the Sessions Court, petition to prosecute him for perjury will not lie. (Pakenham-Walsh, J.) Public Prosecutor v. Boya Bisutiga.

1933 MWN 251.

——Notification under S. 193 (2) — Effect on power of High Court under S. 526.

Per Madgavkar and Patkar JJ., Murphey J. dissenting.— The powers of High Court to transfer a case under S. 526 are in no way affected by a notification of the Local Govt. under Ss. 9 and 193 (2) of the Code, directing a case to be tried by a certain Judge of a certain place.

Per Madgavkar J.— Whatever its power under S. 178, neither by S. 9 nor by S. 193 did the Legislature intend that the Local Govt. should interfere with the ordinary course of justice in a particular case or transfer a particular case from a particular Judge to another particular Judge. Even if such a notification is within the letter of these sections, it violates their spirit. (Madgavkar, Patkar and Murphey, JJ.) Lakshman Chavji v. Emperor.

AIR 1931 Bom 313 : 33 Bom LR 675 : 55 B 576 : Ind Rul (1931) Bom 459 : 134 IC 347 : 32 Cr LJ 1147 (SB).

CRIMINAL P. C. (V of 1898), S. 193

——Attempted murder—Sessions Judge should try.

Cases of attempted murder which vary greatly in gravity should ordinarily be tried by a Sessions Judge and not by Assistant Sessions Judges. (Raza and Pullan JJ.) Emperor v. Ghura.

AIR 1929 Oudh 150 = 6 O W N 43=115 I C 846 = 12 A I Cr R 359 = 30 Cr L J 544.

——Cannot be added in Sessions Court.

The object of S. 193, Cr. P. Code, in requiring that a Court of Sessions shall not take cognizance of an offence unless the accused has been committed to it by a competent Magistrate is to secure to the accused who is charged with a grave offence a preliminary enquiry which would afford him the opportunity of becoming acquainted with the circumstances of the offence, and to enable him to make his defence. This object would indubitably be frustrated, if a fresh charge is substituted or added in the Sessions Court on which the prosecution have not led evidence even in the Sessions Court but intend to lead evidence. (Kincaid J. C. and Rupchand Bilaram A. J. C.) Emperor v. Stewart

AIR 1927 Sind 28 = 21 S L R:55 = 97 I C 1041 = 27 Cr L J 1217.

——S. 193 (2)—Reference to Sessions Judge under S. 123—Latter can transfer it to Addl. Sessions Judge.

When under S. 123, Cr. P. C. a Magistrate referred to the Sessions Judge a case where the accused failed to give security for good behaviour the case can be transferred by the latter to the Additional Sessions Judge for disposal. (Walmsley and Chotzner JJ.) Benode Behari Nath v. Emperor

AIR 1923 Cal 649 = 27 C W N 996 = 50 Cal 229 = 81 I C 61=39 C L J 75=25 Cr L J 661.

——S. 193 (2)—Case—Appeal—Transfer of.

The word 'case' used in S. 193 (2) of the Cr. P. Code, cannot be extended to appeal or other matters. A Sessions Judge cannot transfer an appeal filed in his court to the Court of Assistant Sessions Judge. 9 B 164 ; 7 A 661, Foll.; 2 A L J 576, Appl. (Knox J.) Emperor v. Abdul Razzak

AIR 1915 All 101 = 37 All 286 = 13 All L J 363 = 28 I C 652=16 Cr L J 316.

——Ss. 193 and 423 (1)—Sessions Court—Jurisdiction—Authority to commit to itself.

In cases of offences in which a Court of Session is not expressly empowered to take cognizance as a Court of original jurisdiction, a commitment by a Magistrate duly empowered in that behalf is necessary in order to give it power to take cognizance. (Banerji, J.) Emperor v. Maula Khan,

A W N 1907, 178=6 Cr L J 7.

—S. 194.

——The inherent power of the Court to punish for contempt of Court is a power which is essential in the interests of administration of justice and that power is not restricted in any degree by the provisions of S. 194, Criminal P. C. (Thom and Harris, JJ.) Advocate of Allahabad, In the matter of,

A I R 1935 All 1=7 R A 827=4 A W R 1155=1945 A L J 125=154 I C 955 = 1935 Cr C 1 = 1935 All L R 271.

——Ss. 194 (2), 172 — Ex officio information when to be resorted to—Nature of such information — Necessity of formal charge—Allegations as to the opinion of executive authorities, propriety of.

An ex officio information under S. 194 (2), Criminal P. C. should contain a statement of the charge as certain and detailed as an indictment.

CRIMINAL P. C. (V of 1898), S. 194

This unusual procedure should not be resorted to in cases which could be tried by the ordinary procedure.

Allegations as to the opinion of the executive are quite out of place in a criminal information likely to be very prejudicial to the accused, and ought never to be included. (Lords Atkin, Thankerton Wright, Sir Lancelot Sanderson and Sir George Lowndes.) Dwarkanath Varma v. Emperor.

AIR 1933 P C 124=14 P L T 305=1933 A L J 645=35 Bom L R 507=142 I C 335=Ind Rul (1933) P C 65 =37 L W 584=64 M L J 466=1933 M W N 409=10 O W N 522=37 C W N 514=57 C L J 177=34 Cr L J 322 (PC).

——S. 194 (4)—Conditional sanction if valid.

A sanction to prosecute, in case certain conditions are satisfied is illegal; before granting sanction the Magistrate should satisfy himself that at the time of the order there is a prima facie ground against the person whose prosecution is sanctioned. (Sundara Aiyar and Spencer JJ.) In re P. Muneyya.

36 Mad 471=22 I C 187=15 Cr L J 43.

—S. 195.

See also (1) Arms Act (1878), S. 19.
(2) Civil P. C. (14 of 1882), S. 647.
(3) Ibid, S. 407.
(4) Madras District Municipalities Act (4 of 1884).
(5) Mamlatdars Courts Act (2 of 1906), S. 23.
(6) Penal Code (1860), Ss. 192, 193.

SYNOPSIS

1. Sanction abolished.
(a) Sanction when may be granted.
(b) Conversion of proceedings under S. 195 to those under S. 476.
(c) Application necessary for sanction.
(d) Person who can apply for sanction.
(e) Sanctioning authority.
(f) Court to which application should be made.
(g) Application should be made without delay.
(h) Form and particulars of sanction.
(i) Sanction for offence under S. 193, Penal Code.
(j) Procedure.
(k) Notice.
(l) Nature of proceedings.
(m) Successive sanctions.
(n) Withdrawal and compromise.
(o) Costs.
(p) Person who can avail of the sanction.
(q) Irregular sanction.
(r) Right of appeal.
(s) Powers of appellate Court.
(t) Revocation of sanction.
(u) Computation of period mentioned in old sub-s. (6).
(v) Extension of period of sanction under old sub-s. (6).
(w) Limitation for appeal.
(x) Revision.
2. Effect of Amending Act 18 of 1923.
3. Applicability, object and scope.
(a) Object of section 195.
(b) Section 195 and S. 476.
(c) Section is mandatory.
(d) Section to be construed strictly.
(e) Facts disclosing offence not falling under S. 195.
(f) Facts amounting to two offences — One falling under S. 195.

(g) Complaint against offender—Cognizance of offence against co-offender.

4. Complaint.

5. Sub-section (1) (a) — Offences concerning public servants.
(a) Who can make complaint.
(b) Non-applicability of sub-s. (1) (a).
(c) Complaint by successor in office.
(d) Superior Officer or Presiding Officer of Court.

6. Subordination of public servants.

7. Offences mentioned in sub-s. (1) (a) — Complaints in cases of.
(a) Offence under S. 182, I. P. C.
(b) Offence under S. 183, I. P. C.
(c) Offence under S. 186, I. P. C.
(d) Offence under S. 188, I. P. C.

8. Sub-section (1) (b) and (c) — "Any proceeding."

9. "In relation to any proceeding."
(a) "In relation to."
(b) Offence committed prior to proceeding.
(c) Offence committed during pendency of proceeding.
(d) Offence committed subsequent to proceeding.

10. Offence under S. 211, Penal Code.
(a) Introductory.
(b) Complaint to police only.
(c) Complaint to police who report it to be false.
(d) Complaint to police and also repeated in Court.
(e) Complaint to Court.

11. Giving or fabricating false evidence.

12. Clause (b)—Offender whether should be a party.

13. Clause (c)—Offences mentioned in.

14. "By a party to any proceeding."
(a) 'Party,' meaning of.
(b) Clause (c) applies to party only.
(c) Offence by several persons of whom one is party.
(d) Offence committed prior to offender becoming party.

15. "Document produced or given in evidence."
(a) "Produced or given in evidence."
(b) Document.
(c) Clause (c)—Document if to be produced by party.
(d) Time of production of document.

16. "Any offence described in S. 463."

17. Clauses (b) and (c) — Who can make a complaint.
(a) Court that should complain.
(b) Court competent to complain.
(c) Proceeding transferred, withdrawn or heard—Who should complain.
(d) Court that cannot complain.

18. Sub-section (2)—"Court."
(a) Court, meaning of.
(b) Instances of Courts.
(c) Instances of no Courts.

19. Sub-section (3)—Subordination of Court.

20. "Court to which appeals ordinarily lie."
(a) "Appeals ordinarily lie."
(b) District Munsiffs and Subordinate Judges.
(c) District Judge.
(d) Single Judge of the High Court.
(e) Revenue Court.
(f) Additional Sessions Judge.
(g) District Magistrate.
(h) First Class Magistrate.
(i) Other Magistrates.
(j) Election Officer.

21. Proviso (a)—Subordination where appeals lie to more than one Court.

22. Proviso (b)—"Case or proceeding."

23. Subordination of Civil Courts from whose decrees no appeal ordinarily lies.
(a) Provincial Small Cause Court.
(b) Presidency Small Cause Court.
(c) Miscellaneous.

24. Abetment and conspiracy.

25. Sub-section (5)—Withdrawal of complaint.

26. Appeal—See also under S. 476B.

27. Revision—See also under S. 476B.

28. Dismissal of complaint for non-compliance with section—Effect.

29. Analogous provisions in other Acts.

1. Sanction abolished.
(a) Sanction when may be granted.
(b) Conversion of proceedings under S. 195 to those under S. 476.
(c) Application necessary for sanction.
(d) Person who can apply for sanction.
(e) Sanctioning authority.
(f) Court to which application should be made.
(g) Application should be made without delay.
(h) Form and particulars of sanction.
(i) Sanction for offence under S. 193, Penal Code.
(j) Procedure.
(k) Notice.
(l) Nature of proceedings.
(m) Successive sanctions.
(n) Withdrawal and compromise.
(o) Costs.
(p) Person who can avail of the sanction.
(q) Irregular sanction.
(r) Right of appeal.
(s) Powers of appellate Court.
(t) Revocation of sanction.
(u) Computation of period mentioned in old sub-s. (6).
(v) Extension of period of sanction under old sub-s. (6).
(w) Limitation for appeal.
(x) Revision.

1. Sanction abolished—

(a) Sanction when may be granted.

——Sanction—Interpolated sanction does not necessarily mean absence of sanction. (Atma Charan J. C.) Rikhabdas v. State,

AIR 1952 Ajmer 43 (2)=1952 Cr L J 1381.

——In granting or refusing sanction to prosecute under the provisions of S. 195 what has mainly to be seen is whether there is a reasonable probability of a conviction. (Kinkhede A. J. C.) Bhagirathibai v. Emperor.

AIR 1926 Nag 141=89 I C 713=26 Cr L J 1401.

CRIMINAL P. C. (V of 1898), S. 195 — 1. Sanction abolished—(a) Sanction when may be granted ——S. 195 (1) (b)—False charge — Penal Code, S. 211—Parties on bad terms.

If the Magistrate after a consideration of evidence has found that the charge is false, there is no reason why the accused against whom the charge was brought should not be allowed, on the ground that the parties are on bad terms to prosecute his accuser, for having brought a false charge. (Martineau J.) Harichand v. Aya Ram,

AIR 1922 Lah 403 (1)=4 Lah L J 321=77 I C 434=25 Cr L J 386.

——Sanction should not be granted unless there is a reasonable expectation of a conviction. (Lumsden J.) Abdul Qadir v. Muhammad Ibrahim Khan,

AIR 1924 Lah 569=76 I C 183=25 Cr L J 119.

——Grant of sanction — Proper investigation necessary before granting sanction.

Sanction must not be given to prosecute a person merely because an officer without proper judicial investigation or enquiry is of opinion that such person ought to be prosecuted for some offence. (Bucknill J.) Chote Lal v. Emperor,

AIR 1923 Pat 542=1 Pat L R 137 Cr=74 I C 710=24 Cr L J 806.

——Grant of sanction — Judicial discretion of — Prima facie case—Powers of Appellate Court.

Under S. 195 (1) (b) the exercise of the Court's discretion will be judicial only if it considers whether with reference to the evidence available and the other circumstances, a prosecution is desirable in the public interest, and not, if it merely satisfies itself that "a prima facie case" has been made out.

Per Oldfield J.—Firstly, the duty of the Court granting sanction is discharged if it exercises a judicial discretion; and similarly the duty of the Appellate Court, if it satisfies itself whether such a discretion has been exercised. The former Court must therefore be required, whatever the extent to which the investigation undertaken for its own satisfaction has been carried to put on record sufficient to demonstrate to the latter that its exercise of discretion has been judicial. In the next place it may be said at least that the Court cannot be regarded as having exercised a judicial discretion in granting sanction, when it has satisfied itself only that a prima facie case has been made out, if by that is meant only that formal evidence of the ingredients of the offence is available, without reference to defects which may deprive that evidence wholly or to a material extent of value.

Per Coutts-Trotter J. — It is to my mind, vital that it should be recognised that a Court, in sanctioning a prosecution arising out of facts which have come before it during the trial of a civil case should not be supposed to be discharging that which is the task of the Committing Magistrate at a later stage and usurping his functions by explicitly or tacitly pronouncing that there is a prima facie case. Where it is shown that the learned Judge exercised his discretion on a mistaken view of the facts he may be treated as not having exercised a judicial discretion at all, and the appellate tribunal may be considered as thereby invested with an unfettered discretion to act on the true facts. (Schwabe C. J., Oldfield and Coutts Trotter JJ.) Muniswamy Mudaliar v. Rajaratnam Pillai,

AIR 1923 Mad 136=44 M L J 774=72 I C 505 = 16 L W 505=24 Cr L J 340 (FB).

——Ss. 195 and 476—Procedure—Sanction to prosecute —Court's duty.

The Magistrate shall himself make a proper enquiry into the offences against public justice of the commission of which there are at least strong indications and shall thereafter either refuse sanction or grant it, if it should

CRIMINAL P. C. (V of 1898), S. 195 — 1. Sanction abolished—(a) Sanction when may be granted

seem proper to take action, himself under S. 476 of the Criminal P. C. The proper attitude of the Court and the principle that should guide it in the case of offences against public justice are exactly the same as those of the police officer who actually sees the commission of what appears to be cognizable offences. He must make full inquiry. He fails in his duty if he takes no action at all, but merely waits for the aggrieved party to complain and also if when such a complaint has been made, he does no more than scrutinise the evidence put before him by that party or that of the facts he happens to have seen himself. (Hallifax A. J. C.) Tulsiram v. Tilokchand,

AIR 1923 Nag 258=68 I C 829=23 Cr L J 605.

——Propriety of action—Grounds.

Where an inveterate enmity exists between the parties the Court will, in the interests of justice, refuse to give sanction for prosecution (Lyle A. J. C.) Nazir Hasan v. Md. Yamin,

A I R 1922 Oudh 225 = 26 O C 104 = 68 I C 414=9 O L J 282=23 Cr L J 574.

——Grant of sanction—False suit — Plaintiff prevented from producing evidence.

Sanction to prosecute for bringing a false and fraudulent suit should not be granted when the plaintiff has been thwarted while attempting to establish the correctness of his claim by the unwarranted activities of the Police acting as the agent of the defendant. (Shadi Lal C. J.) Khairat Ram v. Emperor,

3 Lah L J 537=63 I C 817.

——Ss. 195 and 476—Grant of sanction—To be granted when there is probability of conviction.

The principle to be followed in taking action under S. 195 or 476 of the Code is that no prosecution should be allowed to be instituted unless there is a reasonable probability of conviction. The fact that there has been delay in applying for sanction or that the applicant is actuated by malice or vindictiveness is no ground for refusing to grant sanction where there is a probability of conviction. (Hallifax A. J. C.) Krishna Rao v. Sitaram,

AIR 1921 Nag 91=59 I C 855=22 Cr L J 151.

——Ss. 195 and 476—Grant of sanction — Principles for —Private spite.

Sanction to prosecute should not be granted if the object of the applicant is not to vindicate public justice but to satisfy private spite. If the Court thinks that proceedings ought to be instituted in the interests of justice it should proceed under S. 476, Criminal P. C. (Ryves J.) Sheikh Sanaoo v. Emperor,

AIR 1919 All 78=54 I C 416=21 Cr L J 64.

——Grant of sanction—Principles.

The discretion of the Court to grant or refuse sanction should be exercised with caution and discernment to further the ends of justice and not to permit the use of the penal law to satisfy private ends or personal spite. Where it appears that there is considerable ill-feeling between the parties, and there are grounds for believing that there is a likelihood of misuse of the law, sanction ought not to be granted. (Das J.) Kalwa Gope v. Antonini,

A I R 1919 Pat 547 = (1919) Pat H C C 286=51 I C 781=20 Cr L J 541.

——Grant of sanction—Rules for—Appeal.

No sanction should be granted unless the record shows some foundation for the charges made. The Court should be satisfied that there is no abuse of the administration of criminal justice to serve private ends. If the lower Court refuses to sanction, the higher Court should grant it with great caution only if there is a reasonable prima facie case and should give reasons for differing from the

CRIMINAL P. C. (V of 1898), S. 195 — 1. Sanction abolished—(a) Sanction when may be granted lower Court. (Jwala Prasad J.) Bachan Ram v. Mohit Ahir,

AIR 1910 Pat 215=50 I C 817=20 Cr L J 337.

——Grant of sanction—Public interest to.

The object of the law in requiring sanction is that prosecution shall take place only where the interests of public justice and not of private spite, demand it. 1 C W N 400, Foll. Where there is a conflict of opinion between the original and appellate courts as to the truth of the evidence it is not a fit case for granting sanction. (3 C W N 3 Foll.) (Stanyon A. J. C.) Amolak Chand Hemraj v. Ishnaji.

AIR 1917 Nag 69=46 I C 689=19 Cr L J 769.

——S. 195 (1) (b)—False suit—Grant of sanction when ex parte decree not set aside.

A defendant against whom an ex parte decree has been passed need not have that decree set aside before applying for sanction to prosecute the plaintiff for bringing a false suit. The fact that the period of limitation for setting aside the ex parte decree has expired is no bar to the grant of sanction. When the offence against the public justice has been committed the offenders are liable to punishment irrespective of the state of affairs in the civil Court. (Mullick J.) Jugeshwar Prasad v. Ragho Misser,

AIR 1918 Pat 190=4 P L W 143 = 2 P L J 688=43 I C 434=19 Cr L J 146.

——Ss. 195 and 476—Scope of—Sanction—Direction to prosecute.

A sanction is not a direction to prosecute as it leaves the private prosecutor to exercise his discretion as to whether he should proceed or not and so an order expressly ordering a prosecution is not a sanction, e. g., the order of a Magistrate ordering prosecution suo motu is merely an executive order and not a sanction. 8 C 435, Ref. to. (Pratt J. C. and Crouch, A. J. C.) Dodumal v. Emperor,

AIR 1916 Sind 94=10 S L R 65=35 I C 481=17 Cr L J 305.

——Grant of sanction—Private grudge.

A person cannot procure sanction to prosecute in pursuance of a private grudge. (Stuart A. J. C.) Patan Din v. Bhagwan Din,

AIR 1915 Oudh 120=30 IC 448=16 Cr L J 624.

——Grant of sanction—Principles — Letters Patent (Cal) (cl.) 10—Disciplinary Jurisdiction—Attorney.

Section 195 is expressed in the widest terms and confers on the Court an unrestricted discretionary power. When a tribunal is invested with a discretion without any indication in the Act or rules of the grounds upon which the discretion is to be exercised, no rules can be laid down with a view to indicate the particular way in which the discretion should be exercised. The Court will see that there is no abuse of the administration of criminal justice. An application for sanction is not to be conducted on the same lines as the criminal trial which is to follow. The Court will see if there is a prima facie case. An attorney can make an affidavit as an answer to a rule issused against him and a false statement in such an affidavit renders him criminally liable. After proceedings against an attorney under Cl. 10 of the Letters Patent failed, an application to sanction the prosecution of the attorney for offences under Ss. 193 and 196 of the Penal Code in regard to certain affidavits in the proceedings, was made. Held, that the Bench before which application was made, was neither prosecuting nor trying the accused, but merely considering whether the statutory bar of S. 195, Criminal P. C., to the trial of certain offences should be removed. The Court granted sanction. (Jenkins C. J. and

CRIMINAL P. C. (V of 1898), S. 195 — 1. Sanction abolished—(a) Sanction when may be granted Stephen and Chaudhuri JJ.) Hume, Public Prosecutor v. Poresh Chunder Ghose,

A I R 1914 Cal 597=41 Cal 446=22 I C 321=15 Cr L J 49 (SB).

——Grant of sanction—Enforced payment of debt.

Sanction to prosecute should not be granted if it appears that it will not be used bona fide for the purpose of obtaining a conviction, but for enforcing payment of a decree. (Crouch A. J. C.) Donald Graham and Co. v. Ghansham Das Kewalram,

5 S L R 237=15 I C 805=13 Cr L J 533.

——S. 195 (1) (b) and (c) — Evidence — Materials for granting sanction.

Sanction under S. 195 (1) Cls. (b) and (c) should be granted only on materials which can be regarded as legal evidence under the Evidence Act, whether the inquiry is made by the Magistrate himself or by a Police officer under S. 202, Criminal P. C. A sanction granted merely on a Police report is illegal. (Per Spencer J.) — It is not illegal but the person against whom sanction is asked for, should be allowed to show cause against it, 8 A 38 and 6 C 496, Referred to. (White C. J., Sankaran Nair, Abdur Rahim, Ayling and Sadasiva Iyer JJ.) Bapu v. Bapu.

AIR 1916 Mad 1110=39 Mad 750=11 M L T 367= (1912) M W N 499=22 M L J 419=14 I C 305=13 Cr L J 209 (FB).

——Ss. 195 (6) and 476—Revocation of sanction—Grant and revocation of sanction—Judicial proceeding.

The grant of sanction, revocation of it and refusal to grant are all judicial acts. (Mookerjee and Carnduff JJ.) Bala Pasban Kuldip Lal v. Gurwar Missar,

13 I C 111=13 Cr L J 1 (Cal).

——Grant of sanction—Compromise—Sanction.

After the parties had compromised it is not a case to sanction prosecution. (Richards J.) Beni Pershad v. Sarju Pershad,

33 All 512=8 A L J 429=9 I C 982=12 Cr L J 174.

——Sanction to prosecute when to be granted — Cross examination on affidavit—Permissibility.

The true rule is that before granting a sanction under S. 195, the Judge should be satisfied that there is a reasonable prima facie case fit to be tried. The giving of a sanction to prosecute does not involve any trial of the issue, nor necessarily the forming of any definite opinion one way or the other upon the prisoner's guilt, but is restricted to removing a bar to this question being formally tried in another place. On principle and as a general rule, no cross-examination should be allowed on affidavits in support of an application for sanction to prosecute. (Beaman J.) Safurabai v. Abdullabhai Ready-money,

11 Bom L R 1164=4 Ind Cas 273=10 Cr L J 539.

——Sanction to prosecute, when should be granted.

No Court should grant sanction to prosecute except upon evidence before it as to the time when and the place where the offence was committed. Mere suspicion that a person has instigated the institution of a false complaint is not enough for the purpose of granting a sanction, without a prima facie case being made out against him. (Knox J.) Azharul Hasan v. Mazhar Hasan,

6 A L J 337=2 Ind Cas 467=10 Cr L J 28.

——Sanction to prosecute under S. 195, I. P. C.

Where a Sub-Inspector of police deposed that he recognised a dacoit by the flash of his revolver and a sanction for his prosecution under S. 195, Penal Code was granted held, that sanction ought not to have been given, as identification by the flash of a revolver is not impossible. In order to sustain a conviction, it is necessary for the pro-

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secution to prove that the Sub-Inspector, not only spoke falsely, but khew that he was speaking falsely. (Benson and Miller JJ.) Gopalasami Naidu v. Emperor,

6 M L T 91=2 Ind Cas 431=10 Cr L J 7.

——Ss. 195 and 476—Difference in procedures.

There is a difference between procedures under S. 195 and S. 476. Under the former section, the responsibility for prosecution really rests upon the private person to whom the sanction is given which under the latter section it rests upon the Court which orders the prosecution. (Knox and Griffin JJ.) Girwar Prasad v. King Emperor,

6 A L J 392=1 Ind Cas 306=9 Cr L J 219.

——Action on complaint before sanction.

Any action taken by a magistrate upon a complaint under Ss. 467 and 471, I. P. C., but before the grant of the sanction under S. 195, Criminal P. C., is illegal. Magistrate can, however take cognizance of the complaint after the sanction. (Chandavarkar and Heaton JJ.) In re Manjnath Shivnath,

10 B L R 1053=9 Cr L J 183.

—— Sanction should be granted with circumspection and care.

Sanction to prosecute is not usually granted unless there is a very reasonable chance of a conviction following. A sanction to prosecute under S. 195 of the Code of Criminal Procedure ought to be granted with great circumspection and care. If granted it places in the hands of the person obtaining it a very powerful weapon which the unscrupulous might use for purposes of oppression or blackmail. (Maclean C. J. and Holmwood J.) Kali Charan Lal v. Basudeo Narain Singh,

12 C W N 3=6 Cr L J 356.

——Application for attachment before judgment—Statement in affidavit that the defendant intendeded to alienate property — Statement based upon hearsay - Dismissal of application — Sanction for prosecution — Penal Code, Ss. 193, 196, 199, 200.

A plaintiff applied for an attachment before judgment and declared in the affidavit that the defendants, with bad intention were attempting to alienate the immoveable properties belonging to them. In his oral examination in support of his petition, he stated that he only knew from hearsay that the defendants were intending to alienate the properties. The application being dismissed, the Subordinate Judge granted sanction only for an offence under S. 199, Penal Code, but refused sanction for the offences under Ss. 193, 196, 200, Penal Code. The sanction was not based upon any statement made by the petitioner in his oral evidence, but upon the declaration made by him in his affidavit. On appeal by the defendant, the District Judge granted sanction under Ss. 193, 196, 200, Penal Code. Held, that the District Judge did not exercise a sound discretion in according sanction for the prosecution of the petitioner. (Boddam and Bhashyam Aiyangar JJ.) Palaniappa Chetti v. Annamalai Chetti,

27 M 223=2 Weir 208= 14 M L J 74=2 Weir 577= 1 Cr L J 321.

1. Sanction abolished—

(b) Conversion of proceedings under S. 195 to those under S. 476.

——Ss. 195 (6) and 476—Six months — Expiry of period —Order under S. 476.

Where on appeal a District Judge revoked a sanction on the ground that it had expired by the efflux of 6 months and directed a prosecution under S. 476, Criminal P. C. Held the order of the District Judge was illegal and must be set aside. Section 476, Criminal P. C., must be read

CRIMINAL P. C. (V of 1898), S. 195 — 1. Sanction abolished—(b) Conversion of proceedings etc.

consistently with S. 195 of the Code. (Das J.) Lalji Tewari v. Emperor,

A I R 1920 Pat 428=5 Pat L J 58 = 1920 Pat H C C 125=1 Pat L T 147=54 I C 894=21 Cr L J 190.

——Ss. 195 and 476 — Scope of — Sanction — Order for prosecution—Same proceeding.

The same proceeding cannot include both a sanction under S. 195 of the Criminal P. C., and an order for prosecution under S. 476 of the Criminal P. C. A Sessions Judge has no power to deal in appeal with an order of the Lower Court passed under S. 476. (Mullick J.) Eqbal Khan v. Emperor,

A I R 1919 Pat 319=51 I C 173=20 Cr L J 413.

——Ss. 195 and 476 — Scope of — Conversion of proceedings.

The District Court can convert proceedings passed by a lower court under S. 195 into one under S. 476. (Roe J.) Ambika Prasad v. Emperor,

A I R 1916 Pat 86=1 Pat L J 607 = 2 Pat L W 388 =38 I C 332=18 Cr L J 300.

1. Sanction abolished—

(c) Application necessary for sanction.

——Application— Sanction to prosecute by Civil Court.

Sanction to prosecute by a Civil Court cannot be given without application. (Saunders J. C.) Nga San Chim v. So Okaram,

A I R 1916 Upp Bur 13=2 U B R 83=32 I C 674 = 17 Cr L J 82.

——Application—Sanction to prosecute.

Sanction to prosecute must be one given on application: a mere statement that a complainant may be prosecuted is no sanction. 18 A 213, Foll. (Saunders A. J. C.) Nga Kyaw Zan v. Nga Kyi Dan,

A I R 1916 Upp Bur 15 = (1915) 2 U B R 91 = 32 I C 651=17 Cr L J 59.

——Application — Sanction granted without — Defect in order—Complaint.

A Court is competent to give a sanction under S. 195 even if no application is made to it. Per Shah J. — Any defect of procedure or form in granting a sanction cannot convert the sanction into a complaint. (Heaton and Shah JJ.) In re Sangappa Gadigeppa,

A I R 1914 Bom 230=16 Bom L R 947 = 27 I C 155 =16 Cr L J 107.

——Ss. 195, 439 and 476—Application — Necessity for— Procedure—Revision.

In the absence of an application for sanction, sanction should not be given under S. 195, but the Court may order a prosecution under S. 476. If, however, sanction is given, and the order is not appealed from, it will not be interfered with in revision. (Hayward J. C. and Boyd A. J. C.) Emperor v. Nathu Mehar,

A I R 1914 Sind 159 = 8 S L R 21=25 I C 990=15 Cr L J 662.

——Application—Essential.

If the Judge has jurisdiction, the established practice of the Calcutta High Court is to grant sanction under S. 195, Criminal P. C., only on a formal petition on which the order could be passed. (Fletcher J.) Thadeus v. Janaki Nath Saha,

40 Cal 423=21 I C 172=14 Cr L J 572 (2).

——S. 195 (1) (a) and (b)—Application — Police report — —Disobedience of order.

Sanction to prosecute a person under S. 180, I. P. C., was given by a Magistrate on a Police report setting forth the facts of disobedience of the order and requesting that the accused should be prosecuted. Held, a police report is a sufficient application to justify a Magistrate in granting sanction under S. 195. Chapman J. — An application for

CRIMINAL P. C. (V of 1898), S. 195 — 1. Sanction abolished—(c) Application necessary for sanction

sanction is not necessary in cases under S. 195, Sub-s. 1, Cl. (a) Cr. P. C. (Imam and Chapman JJ.) Panchamondal v. Emperor,

A I R 1914 Cal 136=41 Cal 14 = 17 C W N 976=19 I C 948=14 Cr L J 292

——Application — Oral or written if necessary— Desirability of granting sanction.

To obtain a sanction under S. 195 it is ordinarily necessary to make an application in order that the court may be satisfied that some person is willing to avail himself of it and carry on the prosecution. But the application need not be in writing, nor need it be made before an enquiry is held under S. 195. Where an application made to a District Munsif for sanction under Ss. 209, 210, 193 and 465 of the Penal Code was refused, and his order was upheld on appeal, it was held that under the circumstances of the case it was not desirable to grant sanction to a private prosecutor. (Mookerjee and Carnduff JJ.) Raghunandan Prasad Singh v. Ram Narain Singh,

13 I C 97=13 Cr L J 4 (Cal).

——Ss. 195, 476 — Order under S. 195 not illegal where previous order under S. 476 has become infructuous on technical grounds.

After action has been taken under S. 476, Criminal P. C., and an order has been made, which proves infructuous because it is not made in accordance with that section, or because it is defective in form, there is no reason why an application properly made under S. 195 should not be entertained. The position would be different if the order under S. 476 was set aside on the merits. An application presented under S. 195, Criminal P. C., to a Civil Court for sanction to prosecute a person, by a person who is an infant, ought to be presented on his behalf by a properly appointed next friend. The Court will not entertain an application which is not so presented. The objection goes to the root of the matter, and may be taken successfully in the Appellate or the Revisional Court. (Mookerjee and Teunon JJ.) Rajendra Nath Das v. Mukta Rani Dasi,

6 Ind Cas 367=11 Cr L J 327 (2) (Cal).

——Ss. 195, 476—Sanction to prosecute—Complaint to a District Registrar—Departmental enquiry — Sanction — —Validity of prosecution.

A person made a complaint to a District Registrar, against the conduct of a Sub-Registrar, alleging that the latter had delayed to register a document presented by him. The District Registrar, who was also the District Magistrate, after holding a departmental enquiry, was satisfied as to the falsity of the complaint and made an order sanctioning his prosecution for an offence under S. 182, I. P. C.

Held, the order for prosecution was not one under S. 476 of the Criminal P. C., nor was it a sanction under S. 195; it was wholly without jurisdiction and should be set aside.

(2) That the enquiry held by the District Registrar, being a departmental one and not judicial proceeding, S. 476 of the Criminal P. C., could have no application.

(3) That prosecution of a person under a sanction not properly given and, in a case where there was no application for sanction, was illegal and could not be maintained. (Rampini and Mookerjee JJ.) Mulfat Ali Sheikh v. King Emperor,

2 C L J 619=10 C W N 222=3 Cr L J 112.

1. Sanction abolished—

(d) Person who can apply for sanction.

——Death of applicant—Legal representative — Right to n tinue application.

CRIMINAL P. C. (V of 1898), S. 195 — 1. Sanction abolished—(d) Person who can apply for sanction

Where an applicant for sanction dies during the pendency of the application, his legal representatives cannot continue the application. They may file a fresh petition if necessary. (Oldfield and Devadoss JJ.) Ghulam Mohideen Quraishi Sahib v. Ahamadulla Begam Sahiba,

A I R 1923 M 206=46 M 88=1922 M W N 810 = 71 I C 49 (2)=32 M L T 102=16 L W 881=44 M L J 66 =24 Cr L J 2.

——S. 195 (6)—Appeal — Person not a party to previous proceedings—Right of, appeal.

A person who is not a party to the same cannot make an application for sanction. A person who was not a party to the previous proceedings in his private capacity has no right to appeal. (Harrison J.) Prabh Dial v. Gurdit Singh,

A I R 1922 Lah 194 (1)=4 Lah L J 89=68 I C 46 = 23 Cr L J 510.

——Ss. 195 and 476—Application—Prosecution.

Sanction to prosecute can be granted to a private person only if he applies for the same, and an application is necessary for such grant. (Smith J.) Ladha Singh v. Emperor

AIR 1915 Lah 259 = 13 P R (Cr) 1915 = 184 P L R 1915=20 P W R (Cr) 1915=28 I C 107=16 Cr L J 251.

——Ss. 195 and 495—Grant of sanction—Stranger—"Any person," meaning of.

Quaere. — If the words "any person," in S. 195 of the Code include strangers having no connection with the prosecution but who wish to help the prosecution out of personal grudge it is not expedient to grant sanction to prosecute or to permit continuation of prosecution when the person obtaining sanction might use it for harassing his opponent. (Rafique J.) Darshan Das v. Atma Ram,

11 A L J 313=20 I C 213=14 Cr L J 389.

——Sanction to private individual to prosecute adversary during pendency of civil litigation—See ibid, S. 344.

11 Cr L J 4 (Cal).

——Application for sanction—Who can make.

The Government pleader on instructions from the District Magistrate, can apply for sanction to prosecute in respect of an offence alleged to have been committed in connection with a civil suit. (Aikman J.) Emperor v. Ram Adhar Rai,

A W N 1908, 209=8 Cr L J 157.

1. Sanction abolished—

(e) Sanctioning authority.

——S. 195 (4)—Form of order.

If the Magistrate thinks that deliberate perjury has been committed, he can himself direct the prosecution of those whom he considers to be offenders or grant sanction to a party who comes and asks for it. But the Magistrate should not hold out to a party in the case that if he applies sanction would be given. (Heaton and Shah JJ.) In re Edulji Limjibhai,

AIR 1917 Bom 60=19 Bom L R 910 = 43 I C 328 = 19 Cr L J 104.

——S. 195 (1) (a) — Collector ordering prosecution under S. 182, Penal Code—Whether "sanction."

The order of a Collector ordering the prosecution of a person for an offence under S. 182, I. P. C. is an executive order and is not a sanction as, he, by such an order, becomes himself a prosecutor and is by the very fact disqualified from performing the judicial or quasi judicial function of deciding whether a sanction should be granted or not. (Pratt J. C. and Couch A. J. C.) Dodumal v. Emperor

AIR 1916 Sind 94=10 S L R 65=35 1 C 481=17 Cr L J 305.

CRIMINAL P. C. (V of 1898), S. 195 — 1. Sanction abolished—(e) Sanctioning authority

——"Subordinate".

A Magistrate who tried a case during which an offence under S. 211, Penal Code was committed does not become the subordinate of his successor on his reversion as a Deputy Magistrate within the meaning of S. 195 (7) and therefore the successor cannot proceed in respect of the offence in his capacity as the superior Magistrate. But the successor would be quite competent to continue the proceedings already initiated by the predecessor and act under S. 195 or 476. (Chamier J.) Bholu v. Emperor,

7 Ind Cas 51=7 A L J 991=11 Cr L J 438.

——Authority who can grant sanction.

It is much more satisfactory that sanction should be granted by the very Judge in whose Court the alleged offence under Ss. 193 and 211 actually took place though his successor cannot be said to have no jurisdiction to do so. (Richards J.) Yad Ram v. Risal,

5 Ind Cas 469=7 A L J 50=11 Cr L J 140.

1. Sanction abolished—

(f) Court to which application should be made.

——S. 195 (1) (c) — Superior, and subordinate Court — Concurrent Jurisdiction.

Ordinarily application for sanction under S. 195 (c), Criminal P. C. should be made to the Court in which the proceeding in respect of which the sanction is asked for, was taken. But it does not mean that the Superior Court has no jurisdiction. The two Courts have concurrent jurisdiction. (Sanderson C. J. and Mookerjee J.) Narendra Lal Khan v. Akhoy Kandar.

A I R 1920 Cal 916=61 I C 162=22 Cr L J 338.

——S. 195 (1) (b)—Perjury — Application for sanction to prosecute made to a different Court—Procedure.

To obtain a sanction to prosecute for false evidence, a party should generally apply only to the Court where the evidence in question was given ; but when he applies to another Court it beco nes the duty of this other Court to serve notice on the opposite party to show cause why prosecution should not be sanctioned ; and the order of sanction, if any, should be supported by reasons. (Ormond J.) Aung Gyi v. Emperor,

AIR 1917 Low Bur 24=9 Bur L T 202=37 I C 305=18 Cr L J 97.

1. Sanction abolished.

(g) Application should be made without delay.

——Unexplained—Fatal.

There is no limitation fixed for applications for sanction to prosecute but in such cases no time should be lost in instituting proceedings. Delay obviously tends to prejudice the person against whom proceedings are to be taken. (Lumsden J.) Abdul Qadir v. Muhammad Ibrahim Khan,

AIR 1924 Lah 569=76 I C 183=25 Cr L J 119.

——Delay—Ends of justice.

In a suit the defendant denied execution of the suit note and did nothing further but allowed the suit to proceed ex parte and paid the decree amount soon after. In a subsequent criminal proceeding he admitted having executed the note. More than a year after the filing of the said written statement sanction was applied for against him. Held after such lapse of time, the ends of justice did not require the giving of a sanction to prosecute in respect of what may be spoken of as a temporary lapse from probity, apparently repented of. (Teunon and Suhrawardi JJ.) Trailokya Nath v. Radha Ranjan,

67 I C 204=25 Cal W N 886=23 Cr L J 380.

——Delay—Effect.

On an application by the decree-holder for sanction to prosecute the judgment-debtors and certain other persons for wrongful resistance to execution, the trying Court after adjourning the case from time to time for the examination of the witnesses, ultimately disposed of the matter after examining the peon only. Sanction to prosecute was given but nearly six months from the date of the application. The High Court condemned the delay which had taken place in disposing of the application. (Sanderson C. J. and Walmsley J.) Makhan Lal Saha v. Sarojendra Nath Saha Chowdhuri,

AIR 1920 Cal 394=47 Cal 741=24 C W N 743 = 58 I C 831=21 Cr L J 831.

——Delay—Application after expiry of period for second appeal—Delay.

Even though a plaintiff instead of applying under S. 195, Criminal P. C., for prosecuting a defendant, immediately after the decree of the first Court, waits till the decision of an appeal against such decree and applies on the expiry of the period for filing a 2nd appeal the application can still be granted as it is undesirable that a matter while it is being investigated by a Civil Court should be made subject of a criminal proceeding, it is inexpedient to try a case when the result is likely to interfere with the due course of justice. (Drake Brockman J. C.) Nathuram v. Barey,

A I R 1921 Nag 81=55 I C 107=21 Cr L J 235.

——S. 195 (1) (b) and (6)—Delay—Forgery — Inspection of document—Revision by High Court.

A Court should examine an alleged forged document before it grants sanction to prosecute for forgery. Inordinate and unexplained delay in applying for sanction would justify a Court in refusing 'sanction.' The powers of the High Court to revise an order granting or refusing sanction are not limited by S. 115, Civil P. C., but are also controlled by S. 195, Cl. (6) of the Criminal P. C. (Jwala Prasad J.) Kishen Daval Singh v. Jaglal Mandal,

A I R 1918 Pat 621=45 I C 834=19 Cr L J 642.

——Delay.

Long and unnecessary delay in applying for sanction is fatal to the application. If, in addition to inordinate delay, there is the additional circumstance that the deposition containing the false statement was not read over to the witness, the Courts would be justified in refusing sanction granted by the successor in office of the Judge who heard the case. (Chitty and Smither JJ.) Perm Chand v. Sonatan Saha,

A I R 1918 Cal 120=45 I C 268=19 Cr L J 508.

——Delay — When a ground for refusal — Initiative by Government.

Generally delay by a private person in applying for sanction to prosecute indicates want of bona fides or culpable negligence or laches. Where, the real applicant for sanction to prosecute for bringing a false suit was the Government and before the application was made, Police enquiries were instituted and the opinion of the Legal Remembrancer was obtained as a result of which seven months elapsed between the date of dismissal of the suit and the date of the application, Held that the delay was not such as to show want of bona fides and did not amount to wilful negligence. (Mullick J.) The Government Advocate and the Public Prosecutor v. Maharaj Singh,

A I R 1918 Pat 195 = 4 P L W 181 = 2 P L J 692= 43 I C 437=19 Cr L J 149.

——Delay — If a ground for refusal of sanction when Government is the real prosecutor.

Ordinarily delay on the part of a private prosecutor in obtaining sanction in respect of offences against public justice is material as bearing on the question of bona fides, but where the Govt. is in fact the real prosecutor

CRIMINAL P. C. (V of 1898), S. 195 — 1. Sanction abolished—(g) Application should be made without delay

the question of bona fides does not arise. (Mullick J,) Jugeshwar Prasad v. Ragho Misser,

A I R 1918 Pat 190=4 P L W 143=2 P L J 688=43 I C 434=19 Cr L J 146.

——Delay—Four months.

An application for sanction to prosecute after four months cannot be said to have been made promptly. (Tudball J) Sagarman v. Emperor,

A I R 1915 All 486=26 I C 146=15 Cr L J 698.

——Delay—Effect.

A Court has discretion to refuse an application for sanction made after great delay. (Lindsay J. C.) Ram Baksh v. Chhote,

A I R 1914 Oudh 148=25 I C 329=15 Cr L J 577.

——Ss. 195, 476—Sanction to prosecute refused—Considerable delay getting order set aside—Case against accused weak.

Where the injured party failed to take action under S. 195, for a very long time after the case had been finally decided in his favour, and proceedings under S. 195 also had been dragging on for a long time, and two competent Courts had declared the case against the accused weak : Held that the order under S. 476, was liable to be set aside and could not be converted into an order under S. 195. (Arthur Reid C. J.) Pirthi Mal v. Crown,

19 P W R 1911 Cr=11 Ind Cas 618=12 Cr L J 434.

——Delay in making the application for sanction—A prosecution for offence under S. 193, Penal Code should be instituted as soon as possible, after the decision of the case. A sanction to prosecute granted by a Judge other than the Judge before whom the alleged offence was committed and that on an application made after considerable delay which was not at all explained is not a sanction properly granted. Where there was a delay of four months in making an application for sanction to prosecute under S. 193, Penal Code, the delay not being accounted for, and the sanction was granted by a Judge other than the one in whose Court the alleged offence actually had taken place. (Richards J.) Yad Ram v. Risal,

7 A L J 50=5 Ind Cas 469=11 Cr L J 140.

——Delay in applying for sanction — Effect — Power of successor to grant sanction.

Applications for sanction to prosecute ought to be made promptly or the delay should be satisfactorily accounted for. Where a delay for nearly one year was not accounted for it was held that the application ought to have been refused. A Munsif has jurisdiction to grant sanction under S. 195 of the Code in respect of an offence committed before his predecessor in office. (Maclean C. J. and Caspersz J.) Dharam Das Kamar v. Sagore Santra,

11 C W N 119=4 Cr L J 454.

1. Sanction abolished—
(h) Form and particulars of sanction.

——Passages complained against need not be given in the order.

Where the particular passages in respect of which sanction was sought under S. 195 were set out in the Court,

Held, that the order of sanction must be deemed to have been passed with respect to the statements contained in the application for sanction and was valid. (Daniels J.) Kashmiri Lal v. Mt. Kishan Lal,

A I R 1924 All 563=83 I C 650 = 5 L R A Cr 99=26 Cr L J 90.

——Omission of particulars.

A sanction under S. 195 omitting to specify the particulars such as the Court or other place in which, and the occasion on which the offence was committed, is liable to

CRIMINAL P. C. (V of 1898), S. 195 — 1. Sanction abolished — (h) Form & particulars of sanction

be set aside in revision. The defect cannot be cured by S. 537. (Moti Sagar J.) Jaswant Singh v. Emperor,

A I R 1925 Lah 139=81 I C 209=25 Cr L J 721.

——Ss. 195 and 196 — Procedure — A conspiracy—Non-cognizable offence—Particulars specified in application for sanction — Omission to specify particulars in the order granting sanction—Effect of.

An application for sanction under S. 195, Cr. P. Code should be read with the order granting sanction and where the particulars required by S. 195 Cl. 4 are contained in the petition for sanction the order granting sanction need not set them out, 40 C. 423, Foll. Under S. 196-A of the Cr. P. Code consent in writing of the authorities therein specified is not necessary to a prosecution for a conspiracy to commit a non-cognizable offence when S. 194, Cl. 3 of the Cr. P. Code is applicable to the case. (Newbould and Suhrawardy JJ.) Kali Singh v. Emperor,

A I R 1924 Cal 53 = 50 Cal 461=75 I C 533 = 24 Cr L J 949.

——Grant of sanction—Court's duty.

Sanction ought not to be given unless the Court giving sanction has satisfied itself that there are very favourable chances of obtaining a conviction. When sanction is given to prosecute for giving false evidence the actual statements, which are alleged to be false, should be mentioned in the sanction. (Macleod C. J. and Shah J.) Danappa Nagappa In re,

A I R 1922 Bom 38=24 Bom L R 45 = 65 I C 640=23 Cr L I 176.

——Grant of sanction.

If the order granting the sanction embodies by reference the application made and if all the essential particulars required by S. 195 are to be found there, it is a substantial compliance with the requirements of the law. (Teunon and Suhrawardy JJ.) Dallo Singh v. Deputy Inspector General of Police, C. I. D. Bengal,

A I R 1922 Cal 412 (1)=49 Cal 551=65 I C 570=23 Cr L J 138.

——Sanction—Grounds for—Interference.

An order under S. 195, granting sanction to prosecute should contain materials to justify the sanction ; an order giving no reasons whatever for granting sanction cannot be upheld. The mere fact that sanction is granted to the Public Prosecutor because the Magistrate disbelieved the prosecution story, is not a sufficient ground to justify an order upholding a sanction. (Sultan Ahmad J.) Ramani Mohan Ghose v. Public Prosecutor of Bagalpore,

A I R 1920 Pat 168=1 Pat L T 521=55 I C 207=21 Cr L J 255.

——S. 195 (4)—Form of sanction—Person not named—Effect.

A sanction under S. 195 (1) (b) which does not specify either by name or by office the person to whom the sanction is accorded is bad in law, and a trial on such a sanction is invalid, 23 P. R, (Cr.) 1901; 13 Bom. 109 ; 30 P. R. (Cr.) 1905 and 13 P. R. (Cr.) 1915, Ref. (Broadway J.) Basheshar Nath v. Emperor,

A I R 1919 Lah 310=18 P R (Cr.) 1919 = 51 I C 474 =20 Cr L J 490.

——S. 195 (4)—Form of sanction — Penal Code, Ss. 183 and 211.

The Court giving sanction should, as far as practicable, state offence in respect of which the prosecution is sanctioned and also specify the Court where it was committed. If sanction is granted in respect of an offence under S. 193, I. P. C., a prosecution for an offence under

CRIMINAL P. C. (V of 1898), S. 195 — 1. Sanction abolished—(h) Form and particulars of sanction

S. 211 is not competent. (Mullick J.) Sheo Ghulam Sahu v. Kheyali Thakur,

A I R 1919 Pat 416=(1918) Pat H C C 366=49 I C 164=20 Cr L J 132.

——Ss. 195 (4) and 476—Non-specification of false statement charged with.

Whether under S. 195 or S. 476, Cr. P. Code when the offence refers to a statement, the particular statement should be set out in the charge so that the accused should know clearly what statement he is required to meet. But a non-specification of the statement is not a material irregularity, for the law does not require that the statement should be set out. (Knox J.) Chote Lal v. Emperor,

AIR 1917 All 329 = 39 All 367 = 15 A L J 345=39 I C 848=18 Cr L J 608.

——S. 195 (4) — Form of sanction — Seal — Sanction to prosecute by public authority.

A sanction for prosecution by a public authority need not be under seal in the absence of any legislative enactment requiring it. (Chitty and Walmsley JJ.) Kistolal v. Chairman of Hoogly, Chinsurah Municipality,

A I R 1917 Cal 260=20 C W N 824 = 24 C L J 57= 37 I C 515=18 Cr L J 147.

——S. 195 (4)—Alleged false statement — Must be specified.

In the case of an order of sanction to prosecute for false evidence, the alleged false statement should be specified in the order. (Obiter)—Making a false statement to the Police is no offence. (Ormond J.) Po Yin v. Emperor,

A I R 1917 Low Bur 82=9 Bur L T 203=37 I C 306 =18 Cr L J 98.

——S. 195 (4)—Form of sanction.

As sanction only removes the bar on the jurisdiction of of the court, it is not essential to its validity that it should be addressed to a particular complainant. A sanction implies the existence of a person who desires to prosecute. (Pratt J. C. and Crouch A. J. C.) Dodumal v. Emperor,

A I R 1916 Sind 94 = 10 S L R 65 = 35 I C 481 = 17 Cr L J 305.

——Vague sanction.

An order which sanctions the prosecution in respect of a complaint of a particular date while in fact there was no complaint on that date is bad for vagueness. (Chamier J.) Bholu v. Emperor,

7 Ind Cas 51=7 A L J 991=11 Cr L J 438.

——Form of sanction—Person to whom sanction may be given.

There is certainly nothing in the statute law to limit the grant of sanction to a party to the proceeding in connection with which the offence aimed at was committed. Sanction to prosecute for an offence against public justice may be granted to a public officer. (Chitty and Carnduff JJ.) In re Ram Prasad Malla,

4 Ind Cas 6=37 Cal 13=10 Cr L J 454.

——Penal Code, S. 182—False report of police—Sanction to prosecute — Procedure—Before granting a sanction to prosecute the provisions of the Code, inter alia, S. 190 et seq including S. 195, must be strictly followed. Where an executive officer by passing a vernacular order merely bearing some more or less illegible initials directs a subordinate Magistrate to take up a case under S. 182, I. P. C., there is no sufficient compliance with the requirements of law; where on the application by the butchers of a town that the Hindu shopkeepers of the place would not supply them, and asking for measures for their relief to be taken, the Deputy Commissioner, on the report of the Tahsildar to the effect that it was not shown that any ring or boycott had been established and without any

CRIMINAL P. C. (V of 1898), S. 195 — 1. Sancti - abolished—(h) Form and particulars of sanction

complaint by any one and without calling the petitioners before him, issues a vernacular order for their prosecution under S. 182, Penal Code, there is no compliance with the requirements of law. The Chief Court on revision set aside the order as illegal. (Robertson J.) Kala Khan v, Crown,

211 P L R 1908=46 P W R 1908 Cr=9 Cr L J 190.

——Order of sanction not specifying place and occasion of offence.

The order sanctioning prosecution for an offence under S. 211, Penal Code did not specify the Court or the other place in which and the occasion on which the offence was committed.

Held that the order was defective. (Aikman and Karamat Hussain JJ.) Emperor v. Sher Mal,

5 A L J 247=A W N 1908, 102=30 A 243=3 M L T 377=7 Cr L J 389

——Form of sanction.

In granting sanction for criminal prosecution of any person, the Judge should comply strictly with the terms of the law. A sanction, which does not specify the place where, and the occasion on which, the offence is committed, is defective, and should be revoked, although the necessary facts may be gathered by implication. (Rampini and Mookerjee JJ.) Girija Sankar Roy v. Binodo Sheikh,

5 C L J 222=5 Cr L J 188.

——S. 195, cls. (4) and (5)—Form and essentials of sanctions.

Sanction to prosecute should be in express terms, and should strictly comply with the provisions of the law. It is not sufficient compliance with the law, if the necessary elements have to be derived from the Court's judgment by implication. A sanction couched in general terms from which it is impossible to say what offences were imputed to the accused is illegal and ought to be set aside. No sanction should be granted unless the Court has made up its mind that the accused has committed the offences for which he is to be prosecuted. The High Court has authority to interfere under S. 195 (6), even though the grant of sanction has been confirmed on appeal. (Rampini and Mookerjee JJ.) Habibur Rahman v. Munshi Kodabux,

11 C W N 195=5 C L J 219=5 Cr L J 29.

——Name of the person to whom sanction is granted.

The sanction contemplated by S. 195 is not a sanction to any particular person to prosecute but a sanction to the Criminal Courts concerned to take cognisance of certain offences specified in that section, of which the Criminal Courts cannot take cognizance except with the previous sanction or on the complaint of the authority described in that section. The sanction, whilst it is in force, restores to the Criminal Courts a jurisdiction, of which the same section deprives them in respect of specified offences, and need not even name the accused person. (Russell and Aston JJ.) In re Mowjee Liladhar,

8 Bom L R 32=1 M L T 47=3 Cr L J 227.

——Ss. 195, 476 — Sanction to prosecute — Particulars necessary, omission to state — Sanction for offence not complained of—Issue of warrants—Complaint, cognizance of — Examination of complainant, if necessary—Judicial proceeding, cognizance in the course of.

A sanction, under S. 195 of the Code, which omits to specify the particulars required by sub-s. (4) of S. 195 of the Code is bad in law. It is not competent to a Magistrate to sanction the prosecution of a person for having used, dishonestly, documents in regard to which the application for sanction is silent and does not complain. (Rampini and Moorkerjee JJ.) Saroda Charan Haldar v. King-Emperor,

2 C L J 612=3 Cr L J 81.

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——S. 195 (4)—Sanction to prosecute — Specifications.

The sanction under S. 195, should specify the particular person to whom it is granted and the Court or other place in which and the occasion on which, the alleged offence was committed. (Henderson and Geidt JJ.) Niyamut Miah v. Emperor,

1 C L J 630=2 Cr L J 656.

——Prosecution sanctioned—Reasons should be stated.

When a Court grants sanction for prosecution under S. 195, it should state the reasons for doing so, and not confine itself merely to saying that it sanctions the prosecution; otherwise a superior Court is not in a position to decide whether it should exercise the powers conferred on it by S. 195. (Aikman J.) Maula Bakhsh v. Niazo,

A W N 1904, 171=1 Cr L J 640.

1. Sanction abolished —

(i) Sanction for offence under S. 193, Penal Code.

——S. 195 (1) (b) — Perjury — Sanction for prosecution when to be given—Conflicting statements.

A witness is entitled to locus penitentiae and an opportunity to correct himself and if, when he gets that opportunity, he recalls to his mind any fact about which he had made a statement which was not quite accurate, a prosecution for perjury will hardly be desirable. No statement made by a witness in a deposition can be regarded as a completed statement until the deposition is finished and corrected, if necessary, till then it is open to the witness to qualify any statements or correct it himself. Where the statements relied on were, moreover, statements hardly material to the issue before the Court, sanction to prosecute for perjury should not be given. (Kanhaiya Lal J.) Maharaj Prasad v. Emperor,

A I R 1924 A 83=21 A L J 673=9 O & A L R 694=74 I C 443=24 Cr L J 779.

——S. 195 (1) (a) — Perjury — Sanction for — Different views of evidence by final court and appellate court.

Where the two courts have taken different views on a fact it is impossible to see how a sanction for prosecution for perjury in respect of a piece of evidence can be granted. (Das J.) Hiralal Mahton v. Lila Mahton,

A I R 1923 Pat 102 (2)=3 P L T 60 = 64 I C 276 = 22 Cr L J 756.

——S. 195 (1), (b)—Perjury.

It is highly inexpedient to grant an application for sanction for prosecution for perjury made out of motives of revenge. (Moti Sagar J.) Fazal Din v. Emperor,

A I R 1921 Lah 144=3 Lah L J 442.

——Grant of sanction—Principles governing grant.

In ordering a sanction for perjury under Ss. 191 and and 193, I. P. C. the Court must clearly show by its order that the person against whom a sanction is granted intentionally made false statements which should be set forth in the order. Although in certain circumstances the omission to set forth the statements may be cured by a reference to the application for sanction, but the grounds upon which the sanction is based must be recorded in the order granting the sanction. Under S. 195 the Court must find that the statements were intentionally false and the opposite party need not show that he did not testify falsely. Though there is no bar of limitation delay of a month is very material and whether it is prejudicial or not depends upon circumstances. The Court must find whether the object of the application is to wreck vengeance. The Appellate Court must discuss points raised by the appellant and assign reasons for sustaining the order. The opposite party should be given sufficient opportunity to substantiate the pleas taken in the petition showing cause. (Jwala Prasad J.) Daroga Jha v. Babujan Mandal,

AIR 1921 Pat 422=2 Pat L T 311.

CRIMINAL P. C. (V of 1898), S. 195 — 1. Sanction abolished — (i) Sanction for offence under S. 193, Penal Code

——The granting of sanction to prosecute for perjury is a matter within the discretion of the Magistrate and sanction should not be given in a case in which it is obvious that there can be no chance of conviction. (Beachcroft and Ghose JJ.) Durga Prasad v. Ari Pater,

A I R 1920 Cal 896=61 I C 711=22 Cr L J 423.

——S. 195 (1) (b)—Perjury—Conviction—Denial in cross-examination—Sanction.

The accused who was convicted of theft thirty years ago, in the course of a cross-examination in a subsequent case asked about his conviction which he denied. Thereupon the opposite party applied for and obtained sanction to prosecute him for perjury; held that the sanction had been improperly granted under the circumstances. (Tudball J.) Gajadhar v. Emperor,

A I R 1918 All 67=16 A L J 923=48 I C 493=20 Cr L J 2.

——Grant of sanction—Pending case.

Sanction for the prosecution of a witness for deposing falsely in a suit which is still pending, is improper and undesirable. (Teunon and Chaudhury JJ.) Raj Kumar Deoty v. Satish Chandra Ghose,

A I R 1918 Cal 791=21 C W N 755=40 I C 735=18 Cr L J 735.

——S. 195 (1) (b)—Perjury—Contradictory statements.

In the absence of a direct contradiction in the statements, the mere fact of their being contradictory statements, especially when they are immediately followed by explanation and corrections, is no ground to sanction a prosecution. (Spencer and Napier JJ.) Narayana Nadan v. Palaniappa Nadan,

A I R 1918 Mad 1200 = (1917) M W N 141=5 L W 218=37 I C 495=18 Cr L J 143.

——Ss. 195 and 476—Grant of sanction—False complaint.

Where there is dispute over property causing breach of the peace it is inadmissible to give sanction to one party to prosecute another for offences under Ss. 193 and 211, Penal Code. The Court may, if it thinks that prosecution is in the interest of the public welfare, take action under S. 476, Criminal P. C. (Tudball J.) Bhagwati Misir v. Ram Dayal,

18 I C 687=11 A L J 113=14 Cr L J 127.

——Ss. 195 (1) (b), 476 and 529—Perjury—Complaint by stranger to proceedings without sanction—Revision.

A complaint instituted against a person giving false evidence in a judicial proceeding to which the complainant was not a party without obtaining sanction under S. 195, Criminal P. C., must be dismissed. Though the cognizance of such a case under S. 190 (1) (a) is not by itself a sufficient ground for interference on revision yet when the case is not gone into and the sanction could not properly have been given and the complaint was not instituted in the interest of justice, the irregularity became material and the order for prosecution must be set aside. (Beadon J.) Abdul Jamal v. Emperor,

13 P W R 1913 Cr=68 P L R 1913=18 I C 667=14 Cr L J 107.

1. Sanction abolished—(j) Procedure.

——Evidence—Legal evidence necessary to grant sanction.

It has been authoritatively held that sanction must be based on legal evidence.

Where the Court had on the pleadings full jurisdiction to try the suit and had power to record evidence on oath :

Held, the evidence so recorded did not become any the less legal evidence because it subsequently appeared that the plaintiff in the suit had omitted to take certain steps which the appellate Court considered necessary before the suit could be instituted and therefore the evidence was evidence on which a sanction under S. 195, Criminal P. C.,

CRIMINAL P. C. (V of 1898), S. 195 — 1. Sanction abolished—(j) Procedure

could legally be based. (Heald J.) Abdul Aziz v. Maung Tin,

A I R 1923 Rang 225=2 Bur L J 48=75 I C 74=24 Cr L J 874.

——Sanction based on legality.

The wording of S. 476 is wide enough to cover the consideration of other than strictly legal evidence and there is nothing illegal in granting a sanction under S. 195 based solely on an investigation conducted under S. 202 whether by a Police Officer or by the Magistrate himself. (Macpherson J.) Bansidar Marwari v. King-Emperor,

A I R 1924 Pat 138=74 I C 1054=24 Cr L J 862.

——S. 195(7)—Sanction to prosecute—Additional District Judge—Whether can revoke.

A sanction to prosecute granted or refused by a Munsif can be revoked or granted by an Additional District Judge to whom the case is transferred by the District Judge. (Gokul Prasad J.) Ram Charan v. Mewa Ram,

A I R 1921 All 211 = 43 All 409 = 19 A L J 192=3 U P L R (All) 39 = 61 I C 513 = L R 2 A Cr 141=22 Cr L J 385.

——S. 195 (6)—Power of superior Court—Fresh evidence can be taken by the appellate Court.

The appellate Court which under S. 195 (6), Criminal P. C., has power to revoke or grant sanction has power to take fresh evidence if it thinks necessary : 33 Mad. 90; 30 Mad. 311, Expl. (Sadasiva Aiyar and Napier JJ.) In re, Subbasari,

A I R 1921 Mad 453 = 12 L W 605=61 I C 228=44 Mad 47=22 Cr L J 372.

——Irregular procedure.

The petitioner laid information before the police alleging that his brother's wife and her sister had set fire to his house. The police inquired into the case and reported that it was maliciously false and asked for the prosecution of the petitioner under S. 211, Penal Code. The Magistrate passed an order on the police report that the petitioner was to prove his case. Upon his failure to do so the Magistrate sanctioned his prosecution under S. 476:

Held, that the order was bad in law, inasmuch as an order under S. 476 of the Code could only be made after the person to be affected thereby had been called upon to show cause why he should not be prosecuted and an order to prove the case was altogether different from an order to show cause. (Adami J.) Gopal Singh v. Emperor,

A I R 1920 Pat 720 = 1 Pat L T 135 = 55 I C 861= 21 Cr L J 381.

——Procedure—Inquiry—Mode of.

No hard and fast rule can be laid down as to the manner in which an enquiry should be made under S. 195 of the Criminal P. C., but it is necessary that the enquiry should be complete in every detail. An enquiry confined to an examination of the accused and his witnesses is not sufficient, but it should proceed on the allegations made by the party who asks for sanction and on the basis of materials placed by him before the Court, and the Court should not pronounce any opinion on the merits of the case. (Das J.) Kalwa Gope v. Antonini,

A I R 1919 Pat 547 = (1919) Pat H C C 286=51 I C 781=20 Cr L J 541.

——S. 195 (4)—Omission to state particulars — Order on petition—No preliminary enquiry or notice — Legality of prosecution.

Where a Court wrote out on the top of the petition "sanction granted" without any notice to the petitioner and without holding any preliminary enquiry as to the alleged forged character of the receipts:

CRIMINAL P. C. (V of 1898), S. 195 — 1. Sanction abolished—(j) Procedure

Held, that the order was illegal and bad in law, contrary to the spirit of S. 195 (4) and was wholly improper and unwarranted, there being no definite finding as to the character of the rent receipts in the previous case and there being no preliminary enquiry after notice to the petitioner. The necessity of enquiry depends upon the facts of each case. (Jwala Prasad J.) Brahma Dutt Thakur v. Nonoo Lall,

A I R 1917 Pat 89 = 3 Pat L W 346 = 43 I C 333= 19 Cr L J 109.

——Procedure—Inquiry for granting sanction.

In proceeding under S. 195, a Sessions Judge as a Court of appeal, proceeded to hold a very thorough and searching inquiry, in the course of which he examined on oath the person against whom the sanction was sought and recorded other evidence, and having done this he rejected the application for sanction :

Held, that the Sessions Judge was right in adopting the procedure. (Piggott J.) Rahmatullah v. Emperor,

A I R 1916 All 97=32 I C 157=17 Cr L J 29.

——S. 195 (6)—Dismissal for default — Original Court—Appeal.

Quaere.—Whether petitions under S. 195(6) come under the ruling in 32 B. 203 that sanction petitions under S. 195, Criminal P. C., is not liable to be dismissed for default by the Original Court. (Ayling and Phillips JJ.). Subrahmania Iyer v. Rangiah Reddi,

(1916) 1 M W N 8.

——Ss. 195(6), 467, 471—Execution proceedings—Appeal to District Judge—Jurisdiction.

A Sessions Judge cannot register as a criminal appeal an application made to him under S. 195 (6) by a person by way of appeal against an order of a Small Cause Judge refusing to grant sanction to him to prosecute the opposite party under Ss. 195, 467, 471 for offences committed in an execution proceeding before that Court. (Piggott J.) Mohammad Yasin v. Cheda Lal,

A I R 1915 All 217 = 13 A L J 709= 29 I C 540=16 Cr L J 524.

——Dismissal for default.

An application for sanction under S. 195, Criminal Procedure Code should not be dismissed for default but must be disposed of on the merits, even if the applicant does not appear on the date fixed for hearing : 32 Bom. 203; 22 I. C. 423, Foll. (Shah Din J.) Rup Narain v. Maha Dayal,

A I R 1914 Lah 576 = 4 P R (Cr) 1915 = 22 P L R 1916=28 I C 336=16 Cr L J 288.

——Ss. 195 (4) and 476—Procedure—Taking evidence.

When a Court proceeds under S. 476, Criminal P. C., it may or may not make a preliminary enquiry but if a Court admits any evidence in sanction proceedings under S. 195, Criminal P. C., it acts without jurisdiction. The only question for the Court to consider under that section is whether there is prima facie ground for sanctioning a prosecution. The section simply vests the Courts with discretion which must be exercised judicially i. e., with due care and caution. But if a Court admits or takes evidence before granting sanction under S. 195, Criminal P. C., its order of sanction would not become invalid and liable to be revoked on that ground. (Chandavarkar Ag. C. J. and Batchelor J.) In re, Karvirappa,

14 Bom L R 587=16 I C 497=13 Cr L J 689.

——Enquiry if can be held.

It may become necessary when an application for sanction is filed to hold an enquiry in order to decide whether the case is a false one. If it becomes necessary to do so

CRIMINAL P. C. (V of 1898), S. 195 — 1. Sanction abolished—(j) Procedure

the Judge must hold the enquiry. (Pugh J.) Ramadhin Bania v. Sew Balak Singh,

37 Cal 714=14 C W N 806 = 6 Ind Cas 473 =11 Cr L J 357.

——Ss. 195, 423, 439—Application for sanction dismissed for default—Sanction on appeal.

The Public Prosecutor applied to the sub-Judge for sanction to prosecute in respect of offences committed in his Court. On the day fixed for hearing the Public Prosecutor, having failed to appear, the subordinate Judge dismissed the application for default :

Held, that in the absence of a provision in the Code authorising the Court to dismiss the application for default the sub-Judge was bound to consider the application on its merits. That as there was no sanction given or refused by the sub-Judge, the District Judge in appeal had no jurisdiction to accord the sanction under S. 195. The only jurisdiction he had was to revise the order of the Judge. (Chandavarkar and Knight JJ.) In re, Gopal Siddeshwar Deshpande,

10 Bom L R 95=32 Bom 203 = 3 M L T 170=7 Cr L J 120.

——Ss. 195, 190 and 478—False deposition before a civil Judge—Judge in his capacity as District Magistrate taking cognizance under S. 190 (c)—Legality.

Where an assistant Judge, before whom a witness gave a false deposition, took cognizance of the case, as a District Magistrate, under S. 190 (c), Criminal P. C., on the statement in the deposition it was held that the action taken by the Judge was, in effect, action which, as a Civil Judge, he was perfectly competent to take under S. 478 of the Code, as the offence was brought under his notice as a Civil Court, in the course of a judicial proceeding and that as a Civil Judge, he could either transfer the case to himself as a Magistrate for inquiry, or completing the inquiry as a Civil Judge, commit the accused. (Batty and Heaton JJ.) Emperor v. Rashid Karmalli,

9 Bom L R 212=5 Cr L J 202.

——Ss. 195 (b), 197, 200, 476, 537 (b)—Notice to accused before granting sanction — Examination of complainant on oath—Sanction and trial by same Court in different capacities—Penal Code, S. 206.

The produce of a giras was attached in execution. The attachment was removed under order of the Agent. Meanwhile the judgment-creditor presented a criminal complaint to the executing Court, in its capacity as a Magistrate, alleging fraudulent removal of the produce, and charged the judgment-debtor under Ss. 206, 421, 424, Penal Code. Process was issued, but, before its hearing the complainant asked for the sanction necessary under S. 195 (b), Criminal P. C. It was granted without hearing the judgment-debtors. The judgment-debtor approached the Agent :

Held, that (1) Since all civil appeals lay to the Agent's Court, it was that Court which should be approached to get the sanction revoked; (2) that the Magistrate before issuing process, was bound to examine the complainant at once on oath under S. 200, Criminal P. C.; (3) that the complaint was, when presented, bad for want of sanction, sanction being a condition precedent to the complaint, and consequently the Magistrate had no jurisdiction to hear the complaint in respect of S. 206, Penal Code: (4) that it was highly desirable though not legally necessary that notice should have been given: that, when a Court gave sanction upon legal evidence recorded by itself, or upon judicial records (which were themselves a guarantee of due enquiry) it was perhaps not always necessary to give the accused a chance of clearing himself; but it was necessary to have a judicial enquiry and legal

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evidence; (5) that, as there was no final order in this case, the provision in S. 537 (b), Criminal P. C., did not apply, the principle being that where a final order or decision had been given, want of sanction would not be a good plea, unless the accused had been materially prejudiced; and that if there was no final order, there was no reason why an error of this kind should not be corrected while there was still time :

Held, also that the Magistrate could have acted under S. 476, Criminal P. C., but that, since he did not do so, that section did not apply; and that though sanction given and trial conducted by the same authority (as in this case) in two different capacities, was not illegal, yet the accused might reasonably apply for transfer (to the District Magistrate). (Rendall J.) Bhugat Jethbur Jiva v. Sha Amratlal Somchand,

16 K L T 195=4 Cr L J 375.

——Ss. 195, 478—Scope of enquiries under.

It is not permissible to a Court to hold, in the course of the same proceedings, a dual kind of enquiry, one under S. 195, and the other under S. 478. Proceedings under S. 195 are distinct from those under S. 478. The former are of a summary character, and a Court proceeding under the section is not bound to hold an enquiry. In the case of the latter, the enquiry has to be as nearly as possible under Ch. XVIII of the Code.

Where the Judge gave notice to the accused to show cause why sanction should not be granted and then raised at the enquiry an issue whether sanction ought to be granted or the case committed to the Sessions and finally committed the case.

Held that the order of committal was without jurisdiction and quashing it, the Judge was directed to proceed under S. 478. (Chandavarkar and Batty JJ.) In re Sita Ram Shivrambhat,

6 Bom L R 578=1 Cr L J 746.

1. Sanction abolished—

(k) Notice.

——S. 195 (6)—Revision—Penal Code, S. 193.

Where no notice was given to the petitioner before the sanction was given which was given on vague grounds by a Magistrate who had no jurisdiction but to whom the case was transferred by A. D. M., the order giving sanction to prosecute was set aside. Such notice may not be legally necessary but it has been held repeatedly to be highly desirable that it should be given and the omission to give notice taken into consideration with other circumstances may be ground for setting aside on revision such orders as the present. (Campbell, J.) Charn Das v. Rodu,

A I R 1923 Lah 36 (2)=72 I C 970 = 24 Cr L J 506.

——Not necessary.

Before sanction is granted, notice need not be issued to the person proposed to be charged. There is no statutory obligation upon any Judge to do anything of the kind, (Walsh, J.) Angnoo Singh v. Emperor,

A I R 1923 All 35 = 71 1 C 865 = 20 A L J 881=45 All 109=24 Cr L J 257.

——S. 195 (1) and (6) — Procedure — Notice to party — Appeal.

Proceedings under S. 195 of the Cr. P. Code are of a judicial character and no order should be passed without giving notice to the party to whose prejudice an order under the section is made. Section 195 of the Code is self-contained in all respects including appeals. (Wazir Hassan, A. J. C.) Mahomed Yusuf Ali v. Mahomed Yakoob Ali,

A I R 1920 Oudh 58 = 7 O L J 371=23 O C 222=57 I C 658=21 Cr L J 642.